(21,625.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 204.

JOHN E. HAMPTON, ROBERT P. ALLEN, AND JOHN W. CROCKETT, AS RAILROAD COMISSIONERS OF THE STATE OF ARKANSAS, ET AL., APPELLANTS,

vs.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

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1 In the United States Circuit Court for the Western Division of the Eastern District of Arkansas.

Be it remembered, That on the ninth day of November, A. D. 1907, came into the Office of the Clerk of the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas, the St. Louis, Iron Mountain and Southern Railway Company by Oscar L. Miles and T. M. Mehaffy, Esqs., its solicitors and filed therein on the Chancery side of said Court its Bill of Complaint against John E. Hampton, Robert P. Allen and John W. Crockett, as Railroad Commissioners of the State of Arkansas, and Henderson M. Jacoway, as Prosecuting Attorney of the Fifth Judicial District of the State of Arkansas, and James Cochran, as Prosecuting Attorney of the Fifteenth Judicial District of the State of Arkansas, which Bill of Complaint is in words and figures following, to-wit:

2 In the United States Circuit Court for the Western Division of the Eastern District of Arkansas.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Complainant,

vs.

JOHN E. HAMPTON, ROBERT P. ALLEN, and JOHN W. CROCKETT, as Railroad Commissioners of the State of Arkansas, and Henderson M. Jacoway, as Prosecuting Attorney of the Fifth Judicial District of the State of Arkansas, and James Cochran, as Prosecuting Attorney of the Fifteenth Judicial District of the State of Arkansas, Defendants.

Bill of Complaint.

To the Honorable Judges of the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas:

Now comes the above named complainant, St. Louis, Iron Mountain and Southern Railway Company, a consolidated corporation duly organized and existing under and by virtue of the laws of the States of Arkansas and Missouri, and brings this its bill of complaint against John E. Hampton, Robert P. Allen, John W. Crockett, citizens and residents of the State of Arkansas, constituting the Railroad Commission of Arkansas, organized under an Act of the Legislature of said State, approved March 11th, 1899, and Henderson M. Jacoway, the duly elected and qualified Prosecuting Attorney of the Fifth Judicial District of the State of Arkansas, and James Cochran, the duly elected and qualified Prosecuting Attorney of the Fifteenth Judicial District of the State of Arkansas, and thereupon humbly complaining your orator, the St. Louis, Iron Mountain and Southern Railway Company, shows unto your Honors as follows:

3 I.

Your orator is a railroad corporation duly organized and existing under and by virtue of the laws of the States of Arkansas and Missouri.

II.

The defendants, J. E. Hampton, R. P. Allen and John W. Crockett, are citizens and residents of the State of Arkansas, and constitute the Railroad Commission of Arkansas, having been duly elected and qualified in pursuance of the provisions of the Railroad Commission Act hereinafter more particularly mentioned; that said Commissioners derive any and all power, authority and character as such Commission, and in respect to the matters hereinafter complained of, from and under an Act of the Legislature of the State of Arkansas, approved March 11th, 1899, and an Act supplemental thereto, approved April 15th, 1899, and from an Act of the Legislature of the State of Arkansas approved April 19, 1907; the first and original of said Acts being entitled, "An Act to provide for the regulation of railroad freight and passenger tariffs in this State, to prevent unjust discriminations and extortion in the rate charged for the transportation of passengers and freight, and to prohibit Railroad Companies, corporations and lessees in this State from charging other than just and reasonable rates, and to punish the same, and to prescribe a mode of procedure and rules of evidence in relation thereto; and to appoint Commissioners, and to prescribe rules for their government, and define their powers and duties in relation to the same," and the supplemental Act above referred to, being entitled,—"An Act supplemental to an Act to provide for the regulation of

4 railroad freight and passenger tariffs in this state, approved the 11th day of March, 1899"; and the third of said Acts being entitled "An Act to regulate freight transportation by railroad companies doing business in the State of Arkansas". A true copy of said original Act marked "Exhibit A"; a true copy of said supplemental Act marked "Exhibit B", and a true copy of said third mentioned Act, marked "Exhibit C" are attached hereto and filed as a part hereof.

That said original Act fixed and established the office of said Railroad Commission of Arkansas at the City of Little Rock in the county of Pulaski, within the Western Division of the Eastern District of Arkansas, and said Commission and said J. E. Hampton, R. P. Allen and John W. Crockett, as said Commissioners, are residents and inhabitants of said Pulaski County, and of the aforesaid Eastern District of Arkansas, that defendant H. M. Jacoway is the duly elected and qualified Prosecuting Attorney within and for the Fifth Judicial District of the State of Arkansas, of which Judicial District the County of Johnson, in the State of Arkansas is a component part, and the said H. M. Jacoway is a resident and inhabitant of the City of Dardanelle, in the County of Yell in said Judicial District.

That the defendant James Cochran is the duly elected and qualified Prosecuting Attorney within and for the Fifteenth Judicial

District of the State of Arkansas, of which Judicial District the County of Franklin in the State of Arkansas is a component part, and said James Cochran is a resident and inhabitant of the City of Paris in the County of Logan in said Judicial District of the State of Arkansas.

III.

Your Orator owns and operates various lines of railroad in the State of Arkansas, and elsewhere, as follows, to-wit:

5 A main line of railroad extending from the City of St. Louis, in the State of Missouri, thence through said State of Missouri and State of Arkansas to the City of Texarkana in the State of Arkansas, a distance of about 490 miles; together with various branch lines of railroad as follows: From Bismarck, in the State of Missouri to Belmont, in the State of Missouri, a distance of about 120 miles; from Poplar Bluff, in the State of Missouri, to Birds Point in the State of Missouri, a distance of about 70 miles; from Valley Junction, in the State of Illinois, to Thebes, in the State of Illinois, a distance of about 121 miles; from Knobel, in the State of Arkansas, to Helena, in the State of Arkansas, a distance of about 140 miles; from Latour, in the State of Arkansas, to McGehee, in the State of Arkansas, a distance of about 81 miles; from Bald Knob, in the State of Arkansas, to Memphis, in the State of Tennessee, a distance of about 92 miles; from Diaz, in the State of Arkansas, to Carthage, in the State of Missouri, a distance of about 268 miles; from Gurdon, in the State of Arkansas, to El Dorado, in the State of Arkansas, a distance of about 65 miles; from Little Rock, in the State of Arkansas, through the State of Arkansas and the Indian Territory to Coffeyville, in the State of Kansas, a distance of about 322 miles; from Little Rock, in the State of Arkansas, to Alexandria, in the State of Louisiana, a distance of about 291 miles; from Halley, in the State of Arkansas to Clayton Junction, in the State of Louisiana, a distance of about 140 miles; from Tripp Junction, in the State of Arkansas, to Warren in the State of Arkansas, a distance of about 49 miles; together with various other branches and extensions not herein specifically described, aggregating in all 2459.15 miles of railway; that your Orator also has operating rights over various other lines of railroad, including bridges across the Mississippi River at Memphis, Tennessee and Thebes, Illinois, for the purpose of making its lines of railroad continuous as aforesaid; that your

6 Orator is now, and for a long time heretofore, has been engaged in the operation of its various lines of railroad as aforesaid in the States of Missouri, Illinois, Arkansas, Tennessee, Louisiana, Kansas and the Indian Territory in the transportation of freight traffic not only local to the State of Arkansas and said several States and the Indian Territory before mentioned, but also between points in the several States before mentioned, and between points in the Indian Territory and said several States, and between points on its lines in said several States and Territory and all other States of the United States of America by Systems of through rates through routes and traffic arrangements and that your Orator is a common carrier subject to the Act of Congress of the United States of Febru-

ary 4th, 1887, entitled "An Act to regulate commerce" and the several amendments thereto; that your Orator in the conduct of its business as a common carrier as aforesaid uses many thousand freight cars daily and continuously of its own and under the interchange car service rules of all the other Railroads of the United States of America.

IV.

Your Orator further avers that the Act of the State of Arkansas heretofore referred to, approved April 19th, 1907, a copy of which is hereto attached marked "Exhibit C," by Section 23 thereof invests the said Railroad Commission with the power and imposes upon it the duty of formulating rules for the government of the railroads in the State of Arkansas in respect to the furnishing of cars to shippers, transportation and delivery of freight and other requirements.

Your Orator further avers that in pursuance of said Section 23 of said Act of the Legislature of the State of Arkansas, the said Railroad Commission of Arkansas, did on the 19th day of June, 1907, make, publish and promulgate Order No. 346 of the
7 said Railroad Commission, a copy of which is hereto attached marked "Exhibit D."

Your Orator further avers that the Railroad Commission of Arkansas by its Order 346 aforesaid, provided in Section 1 as follows: "Section 1. When a shipper makes a written application to the station agent of a railroad company for a car or cars, to be loaded with any kind of freight embraced in the tariff of said Company, stating in said application the character of the freight, and its final destination, the railroad company shall furnish same at the place of shipment within six days from 7 o'clock A. M. the day following such application.

Or, when the shipper making such application specifies a future day on which he desires to make a shipment, giving not less than six days' notice thereof, computing from 7 o'clock A. M. the day following such application, the railroad company shall furnish such car or cars on the day specified in the application, said station agent shall give applicant a receipt for his application for car or cars, with date of filing said application; provided, that it shall be the duty of every railroad company in this state to exchange loaded and empty cars in the transportation of such freight for the purpose of facilitating its movement with every other railroad with which it connects, forming any part of the route for the shipment of such freight over which it has or participates in joint rates for such shipments; and for each of such railroad companies forming such route or having or participating in such joint rates on demand of such connecting line to furnish to it, within reasonable time after such loaded cars are delivered, as many empty cars suitable for carrying such freight as may be delivered to it loaded by such connecting carrier for the purpose of transportation over its lines or for delivery to any point on its line; and upon demand of the owner thereof, it shall be the duty of every such railroad company

receiving the cars of another to return the same within a reasonable time after demand therefor; and within the time and according to the rules and regulations prescribed by the Railroad Commission of this State, provided, this rule shall not apply to railroads under two miles in length and to railroads that are not public carriers.

For failure to comply with this section the railroad company so offending shall forfeit and pay to the shipper applying the sum of five dollars per car per day or fraction of a day's delay after expiration of free time, upon demand in writing, made within thirty days thereafter by the shipper, provided, failure on the part of the shipper to make demand upon the railroad company shall not release the railroad company from liability to the shipper from said forfeiture or demurrage charges."

Your Orator further avers that the Railroad Commission of Arkansas, by its Order 346 aforesaid, in Section 2 provides as follows:

"SECTION 2. When freight in car loads or less is tendered to a railroad Company and correct shipping instructions given, the railroad agent must immediately receive the same for shipment and issue bills of lading therefor, and whenever such shipments have been so received by any railroad company, they must be carried forward at the rate of not less than fifty (50) miles per day of twenty-four hours, computing from seven o'clock A. M. the day following receipt of shipment, and for failure to receive and transport such shipments within the time prscribed, the railroad company
8 so offending shall forfeit and pay to the shipper the sum of five dollars per car per day, or fraction thereof, on all car load freight, and one cent per hundred pounds per day, or fraction thereof, on freight in less than car loads, with a minimum charge of five cents for any one package, upon demand in writing by the shipper and other party whose interest is affected by such delay; provided, that in computing the time of freight in transit there shall be allowed twenty-four hours at each point where transferring from one railroad to another or rehandling of freight is involved, and in all computations of time between shipper and carrier, Sundays and legal holidays are to be excluded; and in the transportation of cattle, sheep, swine and other animals, the carrier shall be governed by the provisions of the Federal statutes in watering, feeding and rest of said animals, and such delay shall be counted as free time. The period during which the movement of freight is suspended on account of accident, or any cause not within the power of the railroad company to prevent, shall be added to the free time allowed in this section and counted as additional free time.

Your Orator further avers that the Railroad Commission of Arkansas by its Order 346 aforesaid, in Section 4 provides as follows:

"SECTION 4. Railroad Companies shall deliver freight at their depots or warehouses, or, in case of shipments for track delivery, shall place loaded cars at an accessible place of unloading within twenty-four hours after arrival, computing from seven o'clock A. M. the day following arrival of same; except that car load shipments

for track delivery at local stations having not more than one team track shall be placed at an accessible point for unloading by the conductor of the train on which the car arrives. The shipper or consignees shall be paid five dollars per car per day for each day, or fraction of a day, such delivery is delayed."

Your Orator further avers that the Railroad Commission of Arkansas, by its Order 346 aforesaid, in Section 6 provides as follows:

"SECTION 6. A shipper, on whose order a car or cars have been placed for loading, shall be allowed forty-eight hours for the loading of such car or cars, computing time from seven o'clock A. M. the day after such car or cars have been placed subject to the order of the shipper, and thereafter a demurrage charge of not more than five dollars per car per day, or fraction of a day may be assessed or collected on all such cars as have not been tendered to the railroad company with shipping instructions within said forty-eight hours; provided, however, that should the shipper fail to begin loading within forty-eight hours after the expiration of free time, the railroad company shall consider the car or cars released, and may assess and collect ten dollars on each car, covering the demurrage then due; provided, that such delay be not caused by unavoidable accident or strike, and said cars be at once released. The Railroad companies shall not be compelled to furnish cars for future shipments to parties in default as to the payment of demurrage charges herein last provided for until such demurrage charges have been paid. If, after placing the car or cars required by this
9 rule, the railroad company shall, during or after free time, temporarily remove all or any of them, or in any way prevent, obstruct or delay the loading the same, the shipper shall not be chargeable with the delay caused thereby.

When, by reason of delay or irregularity on the part of the railroad company in filling orders, cars are bunched in excess of the ability of the shipper to load as indicated in his application, the shipper shall be allowed separate and distinct periods of free time within which to load the car or cars specified in each separate application."

Your Orator further avers that the Railroad Commission of Arkansas, by its Order 346, in Section 7 provides as follows:

"SECTION 7. A car or cars detained or held at point of shipment for want of proper shipping instructions, or by reason of imperfect or excessive loading, where loading is done by shipper, shall be subject to a demurrage charge of five dollars per car per day, or fraction of a day, said car or cars are so detained or held. In case of imperfect or excessive loading, the shipper shall be notified thereof as early as practicable after said car or cars have been received from him in which case car service charges shall begin at the time of notification, provided no demurrage charge shall be collected by the railroad company after said car has been removed from point of shipment as provided in this rule."

Your Orator further avers that the Railroad Commission of

Arkansas, by its Order 346 aforesaid, in Section 17 provides as follows:

"SECTION 17. Every person, company or corporation operating any railroad in this State which connects with any other railroad in this State, and which forms a part of a continuous line of railway communication to any point within this State, such companies and corporations, respectively, shall afford all due and reasonable facilities for receipting and forwarding by one of such railroads, all the traffic arising by the other, and shall promptly forward the same at through rates, without giving any undue preference or advantage to or in favor of any particular person or company, or any particular description of traffic in any respect whatever, but preference shall be given to live stock and perishable freight; said connecting lines shall as fully comply with the provisions of this rule as if they were the original receivers of said freight or traffic to be shipped or transported over their own lines, and said connecting railroads, that receive a car or cars from a connecting railroad in this state for transportation wholly in this state, shall return said car or cars, or cars of like character, on demand, in a reasonable time after such car or cars are delivered to consignee.

Interstate railroads shall furnish cars on application for interstate shipments the same in all respects as other cars are to be furnished by intrastate railroads under the provisions of this rule.

10 V.

Your Orator further avers that the aforesaid Railroad Commission of Arkansas on the —— day of October, 1907, on the complaints of Hill Hackney & Company, the Franklin Coal Company, the Black Diamond Coal Company, the Co-operative Coal Company, the Schmidt-Blakeley Coal Company, the Big Four Coal Company, W. H. West, the Home Coal Company, and Coal Hill Coal Company, issued its notice to the St. Louis, Iron Mountain and Southern Railway Company, your Orator herein, to appear before said Railroad Commission of Arkansas, and show cause, if any it could, why the penalties provided by the Acts of the Legislature of the State of Arkansas hereinbefore set out, should not be denounced against it for the violation of the aforesaid Acts of the Legislature of the State of Arkansas, and the aforesaid rule and order of the Railroad Commission of Arkansas, for the alleged failure to furnish cars and shipping facilities to the aforenamed complainants, and for the alleged discrimination against the aforenamed complainants and in favor of the Western Coal and Mining Company.

That your Orator, St. Louis, Iron Mountain and Southern Railway Company, in pursuance of the aforesaid notice, made appearance before said Railroad Commission of Arkansas on the —— day of October, 1907, and endeavored to show to said Railroad Commission of Arkansas that it had in no sense been guilty of the acts, omissions and failures charged against it by the aforesaid complainants, that after the introduction of much testimony before said Commission on the behalf of the aforesaid complainants and your Orator herein, the Railroad Commission of Arkansas did

make and enter findings and orders, copies of which findings and orders are hereto attached, marked "Exhibit E" and "Exhibit F" respectively; that the said Railroad Commission of Arkansas either has already transmitted or is about to transmit said orders
11 and findings to the Honorable H. M. Jacoway, Prosecuting Attorney aforesaid, and to the Honorable James Cochran, Prosecuting Attorney aforesaid, and has directed or is about to direct them to institute and prosecute suits against your Orator to recover the penalties provided for in the aforesaid Act or Acts of the Legislature of the State of Arkansas; that under said Acts of said Legislature, and according to the aforesaid findings and orders of the Railroad Commission of Arkansas it will become and be the duty of said Prosecuting Attorneys to institute a large number, to-wit, three hundred and thirty suits against your Orator for the purpose of recovering the penalties denounced by said Railroad Commission against your Orator, that said penalties, under the aforesaid Acts of the Legislature of the State of Arkansas and the Orders and rules and findings of the Railroad Commission of Arkansas hereinbefore set out so denounced will aggregate the maximum sum of Nine Hundred and Ninety Thousand Dollars, and not less than the minimum sum of One Hundred and Sixty Five Thousand Dollars.

VI.

Your Orator avers that the aforesaid Acts of the Legislature of the State of Arkansas, and the rules and regulations of the Railroad Commission of Arkansas promulgated in pursuance thereof, are repugnant to and in violation of Section 8 of Article I of the Constitution of the United States, which provides that the Congress shall have the power to regulate commerce with foreign nations and among the several states and with the Indian Tribes. And your Orator further avers and charges that said Acts of the Legislature of the State of Arkansas, and the action taken thereunder, by the defendant Railroad Commissioners of the State of Arkansas, and threatened to be taken by the Prosecuting Attorneys aforesaid, and the suits for penalties as denounced against your Orator by
12 the said defendant Railroad Commissioners and Prosecuting Attorneys aforesaid, involve a control or attempt to control commerce between the States, and are illegal and void and violative of said provision of the Constitution of the United States above specifically referred to.

Your orator further complains and charges that the said Act of the Legislature of Arkansas approved April 19th, 1907, hereto attached and marked "Exhibit C", makes no provision for any exceptions to the rule which requires the furnishing of cars to shippers upon short notice as therein specified; that said Act does not take into account the periods when traffic may be congested or delays to traffic occasioned by washouts, unavoidable accidents or otherwise on the lines of your Orator's railroad. But said Act peremptorily requires, without regard to circumstances or conditions, and although your Orator may be guiltless of any fault, wrong or

negligence in the premises, and although it might be impossible for your Orator by the exercise of the utmost diligence in the proper management and operation of its railroad and traffic to furnish cars, nevertheless that such cars shall be furnished upon three or six days' notice as the case may be, or otherwise your Orator will be subjected to the payment of the unjust, unreasonable and excessive penalties as by said Act of the Legislature provided. Your Orator avers that it is not possible in the exercise of the utmost care and diligence with respect to the operation of your Orator's lines of railroad to prevent conditions from arising which will temporarily delay its equipment on its lines, and yet said Act of the Legislature and said order of the Railroad Commission of Arkansas made in pursuance thereof, make no provision for any defense, justification or excuse to be made by your Orator under such conditions, but said Act of the Legislature and said order deprive your Orator of any such defense, justification or excuse, and impose upon it the obligation to nevertheless pay the penalties hereinbefore mentioned; that therefore said Act and said order are grossly unreasonable, unjust and oppressive, and if enforced will be in violation of the commerce clause of the Constitution of the United States aforesaid, and the laws of the Congress of the United States passed in pursuance thereof.

13

VII.

Your Orator further avers that the Acts of the Legislature of the State of Arkansas aforesaid, and the rules and regulations of the Railroad Commission of Arkansas taken in connection with the large number and excessive character of the penalties denounced against your Orator for the alleged violation of said Acts of the Legislature of the State of Arkansas, and for alleged violation of the rules and regulations of said Railroad Commission of Arkansas, deny to your Orator the equal protection of the laws and are in violation of the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States which forbids any State to deprive any person of life, liberty or property without due process of law, and to deny to any person within its jurisdiction the equal protection of the laws.

VIII.

Your Orator further avers and charges that the aforesaid Acts of the Legislature of the State of Arkansas, and the rules and regulations of the Railroad Commission of the State of Arkansas, adopted in pursuance thereof, and the findings and orders of said Railroad Commission hereinbefore referred to, and the action taken or threatened to be taken by the Prosecuting Attorneys of the State of Arkansas hereinbefore referred to, taken in connection with the excessive and extreme character of the penalties hereinbefore referred to, are in violation of Section 3 of the Act of Congress of the United States, approved February 4th, 1887, entitled "An Act to regulate commerce" providing as follows:

14

"SECTION 3. That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or

unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

in that your Orator would be compelled under said Acts of the Legislature of the State of Arkansas, and the rules and regulations of the Railroad Commission of Arkansas, to assemble its cars and motive power in the coal districts of the State of Arkansas to the undue and unreasonable prejudice or disadvantage of other coal mining districts in adjacent States, and in the Indian Territory, and in this respect would have the effect to give an undue advantage or preference to persons, companies, firms and corporations engaged in the mining and shipping of coal in the State of Arkansas.

IX.

Your Orator further avers and charges that its freight cars as hereinbefore required by the Railroad Commission of the State of Arkansas to be peremptorily furnished to various shippers of coal in the State of Arkansas upon the order of said shippers as provided for by said Acts of the Legislature of the State of Arkansas, and the rules and regulations of the Railroad Commission of Arkansas thereunder adopted, are instrumentalities equipped, prepared, held and used by your Orator for the movement of interstate commerce, and as such are by the Act of the Congress of the United States, entitled "An Act to Regulate Commerce" approved February 4, 1887, and the amendments thereto, more especially the Amendment approved June 29th, 1906, entitled "An Act to Amend an Act entitled 'An Act to Regulate Commerce', approved February 4th, 1887 and all Acts Amendatory Thereof and to Enlarge the Powers of the Interstate Commerce Commission", exclusively under the control of the Interstate Commerce Commission of the United States, and the Acts of the Legislature of the State of Arkansas aforesaid, and the rules and regulations of the Railroad Commission of Arkansas aforesaid, and the orders and findings of the Railroad Commission of the State of Arkansas aforesaid, are in direct conflict with the aforesaid Acts of Congress, and as such are void and of no effect, and any effort upon the part of the aforesaid Railroad Commission of Arkansas or of the Prosecuting Attorneys of the aforesaid Judicial Districts of the State of Arkansas to enforce the findings and orders of the said Railroad Commission of Arkansas, and the aforesaid Acts of the Legislature of said State will be an invasion of the powers of Congress, and of the exclusive jurisdiction of the Interstate Commerce Commission over and in respect to the cars and instrumentalities of Interstate Commerce aforesaid.

X.

Your Orator charges that the penalties prescribed by the Acts of the Legislature of the State of Arkansas aforesaid, and denounced

against your Orator by the findings and orders of the Railroad Commission of Arkansas aforesaid, and which are sought to be enforced against your Orator by the prosecuting Attorneys aforesaid, are harsh, unjust, unusual, oppressive and excessive and were enacted by the Legislature of the State of Arkansas into the forms of law and regulations hereinbefore set out, as your Orator verily believes for the purpose of so affrighting your Orator and other corporations owning or operating lines of railroad within the State of Arkansas, so that they would be constrained, coerced and compelled to yield instant obedience to said Acts of the Legislature of Arkansas, and orders and findings of the Railroad Commission of Arkansas in pursuance thereof, without question and the fair and free opportunity of resisting and determining the validity thereof by the due and orderly course of judicial proceedings.

16 Your Orator further avers and charges that the Acts of the Legislature of the State of Arkansas and the rules and regulations of the Railroad Commission of Arkansas and the findings and orders of said Railroad Commission hereinbefore set forth, by which the aforesaid harsh, unjust, unusual, oppressive and excessive fines and penalties have been denounced against your Orator and are sought to be recovered, are in violation of the Eighth Amendment to the Constitution of the United States, which provides: "Excessive bail shall not be required nor excessive fines imposed nor cruel, nor unusual punishments inflicted", and are therefore void.

And your Orator charges that the cases in which such fines may be recovered from your Orator are so frequent and repeated and the cumulative effect of such fines and penalties will be so enormous in amount that your Orator will be greatly burdened and embarrassed and possibly financially ruined if it should fail to obey the requirements of said Acts of the Legislature of the State of Arkansas, and the findings and orders of the Railroad Commission of Arkansas with a view to testing the validity of the said Acts of the Legislature and said orders and findings of the Railroad Commission as aforesaid, and your Orator avers that the penal provisions of said Acts of the Legislature of the State of Arkansas sought to be enforced by the Railroad Commission of Arkansas hereinbefore referred to, are such as to deprive your Orator of its property without due process of law, and to deny to your Orator the equal protection of the laws in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

XI.

17 Your Orator further avers and charges that the Railroad Commission of the State of Arkansas acting under the aforesaid Acts of the Legislature of the State of Arkansas and the rules and regulations of said Railroad Commission thereunder adopted, is daily assuming to act under the aforesaid authority of the Legislature of the State of Arkansas, and is constantly attempting to impose upon your Orator the burden to furnish cars to shippers in the State of Arkansas for the movement of freight of all kinds

over its various lines of material in the State of Arkansas and elsewhere as hereinbefore set out upon the peremptory demand and order of said shippers and of the Railroad Commission of the State of Arkansas, and that when your Orator in endeavoring to perform its obligations and duties as a common carrier engaged in interstate commerce fails or refuses to furnish said cars to said shippers upon said requests and orders, the Railroad Commission of the State of Arkansas will make further and additional findings and orders adverse to your Orator, and will, unless restrained by your Honors from so doing, direct the various Prosecuting Attorneys of the State of Arkansas, and other persons, to institute divers suits in the various counties in the State of Arkansas to recover large sums of money as penalties, which said Commission will find your Orator to have incurred, and which penalties it, the said Railroad Commission of Arkansas will denounce aaginst your Orator, and thus a multitude of suits and prosecutions will be instituted against your Orator in the very many Counties of the State of Arkansas through which the lines of your Orator's railroad run, and your Orator will be compelled to appear in each of said Counties and make answer to a great multiplicity of suits in which the Prosecuting Attorneys of the State of Arkansas and other persons acting under the direction of the Railroad Commission of Arkansas will seek to recover judgments against your Orator for the harsh, unjust, unusual, oppressive and excessive penalties hereinbefore set out, and your Orator avers that it will be compelled to employ a vast array of legal counsel and to spend very large sums of money in an effort to vindicate its rights and
18 to challenge the validity of the aforesaid Acts of the Legislature of the State of Arkansas, and the aforesaid orders and findings of the Railroad Commission of Arkansas, unless your Honors shall restrain and enjoin the Railroad Commission of Arkansas and the aforesaid Prosecuting Attorneys of said State and all other persons acting under the direction of the Railroad Commission of Arkansas from further action under and in pursuance of said Acts of the Legislature of the State of Arkansas, and the findings and orders of the said Railroad Commission as hereinbefore set out.

XII.

Your Orator would show that this case is a suit in equity of a civil nature and that the matter in dispute exceeds exclusive of interest and costs the sum or value of Two Thousand Dollars, and that this case is a suit arising under the Constitution and laws of the United States, as follows, to-wit: Under Section 8 of Article I of said Constitution; under Section 1 of Article XIV of the Amendments to the Constitution of the United States; under Article 8 of said Amendments and under the Act of Congress approved February 4th, 1887, and the Amendments thereto, and particularly under the Act of Congress approved June 29th, 1906, amendatory of said Act of Congress of February 4th, 1887, and of the rules and regulations of the Interstate Commerce Commission made under and in pursuance of said Acts of Congress.

XIII.

The premises considered and forasmuch as your Orator is remediless in the premises under the rules of the common law and can have adequate relief only in a court of equity where matters of this nature are properly cognizable and relievable, to the end therefore that the defendants herein named may answer the several matters and things hereinbefore set forth fully and particularly as if the same were here again set forth and repeated, and they were thereto interrogated, your Orators prays that the Railroad Commission of Ar-
19 kansas and the said J. E. Hampton, R. P. Allen and John W. Crockett, constituting the said Railroad Commission of Arkansas aforesaid, and the Honorable H. M. Jacoway, Prosecuting Attorney of the Fifth Judicial District of the State of Arkansas, and the Honorable James Cochran, Prosecuting Attorney of the Fifteenth Judicial District of Arkansas, and all other persons acting under the direction of the Railroad Commission of Arkansas, and each and every one of them, be temporarily restrained and enjoined from instituting, prosecuting, aiding, abetting, directing or causing to be instituted or prosecuted any and all suits of whatsoever nature by which it may be sought to enforce and recover the fines and penalties hereinbefore more particularly and definitely set out, and that the Railroad Commission aforesaid, and each and every one of them, be temporarily restrained and enjoined from taking any further action of whatsoever nature against your Orator under and in pursuance of the aforesaid Act of the Legislature of the State of Arkansas, or under any provision of said Act, and under and in pursuance of the rules and regulations of the Railroad Commission of Arkansas, hereinbefore set forth, adopted in pursuance of said Act of said Legislature.

And your Orator prays that process shall straigh-way issue to each one and all of the aforesaid defendants, directing that they appear at an early day in this Honorable Court and make answer in the premises, but not under oath (answer under oath being hereby expressly waived) and upon full and final hearing that the Act of the Legislature of the State of Arkansas, approved April 19th, 1907, and the orders and findings of the Railroad Commission of Arkansas against your Orator adopted thereunder shall be adjudged and decreed to be null and void and of no effect by the decree of this court, and that the Railroad Commission of Arkansas, and all other persons acting under said Railroad Commission, be forever enjoined from setting up any claim or making any finding or order against your Orator under and by virtue of the aforesaid Act of the Legislature of
20 the State of Arkansas, and the rules and regulations of the Railroad Commission of Arkansas thereunder adopted, and that your Orator may have such other and further relief as in the premises may seem just and equitable, together with all its costs in this behalf expended.

OSCAR L. MILES.
TOM M. MEHAFFY.
Solicitors for Complainant.

ALEX. G. COCHRAN,
Of Counsel.

21 STATE OF MISSOURI,
City of St. Louis, ss:

W. C. Stith, being duly sworn, says that he is the Freight Traffic Manager of the Complainant, in the above entitled action, that he has read the above and foregoing bill, and knows the contents thereof and has knowledge of the matters and things therein set forth, and that the same and each of them are true to his own knowledge except as to matters therein stated on information and belief, and as to such matters he believes them to be true.

W. C. STITH.

Subscribed and sworn to before me this 8th day of November, A. D. 1907.

My Commission expires September 9th, 1908.

[Seal Henry G. Herbel, Notary Public, City of St. Louis, Mo. Commission Expires Sept. 9, 1908.]

HENRY G. HERBEL,
Notary Public, City of St. Louis, State of Missouri.

22 EXHIBIT "A".

Acts of Arkansas—1899.

Act LIII.

"An Act to provide for the regulation of railroad freight and passenger tariffs in this State, and to prevent unjust discriminations and extortion in the rates charged for the transportation of passengers and freight, and to prohibit railroad companies, corporations and lessees in this State from charging other than just and reasonable rates and to punish the same, and to prescribe a mode of procedure and rules of evidence in relation thereto, and to appoint commissioners and to prescribe rules for their government and define their powers and duties in relation to the same."

Sections.

1. Railroad Commission created. Commissioners appointed by the Governor from Congressional Districts. Term of office and salary fixed.
2. Qualifications of Commissioners.
3. Commissioners to hold no other office, nor to be interested in any business inconsistent with act.
4. Vacancies to be filled by the Governor.
5. Commissioners to take oath prescribed by the Constitution.
6. Office to be in Little Rock. Board to appoint Secretary and Stenographer, and make rules and regulations. Salary of Secretary and Stenographer. $500.00 to furnish office in State House.
7. Salary of Board, Secretary and Stenographer to be paid by State.

8. Meetings to be held at different places in the State.
9. Information to be furnished by railroad and express companies.
10. Frieght and passenger tariffs to be adjusted. Express charges regulated, and Board to have general supervision over roads
23 and express companies in the matter of freight and passenger rates. Schedules giving class of property to be carried between different places and charges for same to be posted in depots.
11. Discrimination of all classes prohibited.
12. Contracts and agreements for pooling rates prohibited.
13. Rates for long and short hauls must be consistent.
14. Double amount of damages allowed for violation of Act. Time for filing suits for damages.
15. All complaints to be heard and adjusted.
16. Copies of all leases, contracts, etc., with other lines to be furnished, and number of persons employed and wages paid.
17. Annual reports to be made to board. Penalty for failure to do so.
18. Rules and regulations must be observed. Penalty fixed and suits instituted.
19. Findings of Commission to be recorded and subject to inspection. Certified copies evidence in Court.
20. Authority of Commission confined within the State.
21. Expenses of Commission.
22. Compliance with act forced with mandamus.
23. All complaints must be investigated.
24. Act applies to all persons and corporations carrying persons and property in the State.
25. Books, papers and employés may be examined. Penalty for refusal to allow such examination.
26. Railroads to produce books. Penalty for refusal to do so.
27. Cost of construction for each mile of road to be ascertained and amount of wages paid for such work.
28. Annual report to be made to the Governor.
29. How subpœnaed and paid.
30. Remedies cumulative. Statutes giving such remedies not repealed.
24 31. Repeals all laws in conflict and takes effect from passage.

Be it Enacted by the General Assembly of the State of Arkansas.

SECTION 1. That a Railroad Commission is hereby created, to be composed of three persons to be appointed by the Governor, until the next general election, by and with the advise and consent of the General Assembly in joint session, one to be chosen from the first and sixth, and one from the second and third and one from the fourth and fifth congressional districts, to carry out the provisions of this act, and whose successors shall be elected at each general election thereafter, from the congressional districts as hereinbefore provided. After the expiration of the terms of office of the commissioners, first appointed, the term of office of their successors

shall be two years. The salary of each Commisioner shall be Twenty-five Hundred dollars ($2,500.00) per annum, to be paid from the State Treasury, in the same manner that salaries of other State officers are paid.

SECTION 2. The Commissioners herein provided shall be appointed or elected as aforesaid, and shall be residents of this State, and qualified voters under the constitution, and not less than twenty-five years of age. No one shall be appointed or elected as such Commissioner who is directly or indirectly interested in any railroad in this State, or out of it, or in any stocks, bonds, mortgages, security, or the earnings of any railroad; and if such Commissioner shall become so interstated he shall within a reasonable time so divest himself of such interest; failing to do this his office shall be declared by the Governor to be vacant. And in case any Commissioner becomes disqualified from any causes or in any way, he shall at once remove the disqualifications or resign, and on failure to do so, he must be suspended by the Governor.

SECTION 3. No Commissioner hereunder shall hold any other office under the Government of the United States, or of this State or of any other State government; and shall not while such Commissioner engage in any occupation or business inconsistent with his duties as such Commissioner.

SECTION 4. The Governor shall fill all vacancies in the office of Commissioner by appointment, and the person so appointed shall fill out the unexpired term of his predecessor.

SECTION 5. Before entering upon the duties of his office, each of said Commissioners shall take and subscribe to the oath of office prescribed in the constitution and shall, in addition thereto, swear that he is not directly or indirectly interested in any railroad, nor in any bonds, stocks, mortgages, securities, contracts or earnings of any railroad and that he will to the best of his ability faithfully and justly execute and enforce the provisions of this act, and all laws of the State of Arkansas, concerning railroads, which oath shall be filed with the Secretary of State.

SECTION 6. The Commissioners appointed shall meet at Little Rock and organize and elect one of their members chairman of said commission. A majority of said Commissioners shall constitute a quorum to transact business. Said commission may appoint a secretary at a salary not to exceed Fifteen Hundred Dollars ($1,500.00) per annum, and one stenographer at a salary not to exceed One Thousand Dollars ($1,000.00) per annum. The secretary shall keep full and correct minutes of all transactions and proceedings of said commission and perform such other duties as may be required by the commission. The Commissioners may have power to make all necessary rules for their government. They shall be known collectively as the "Railroad Commission of Arkansas," and shall have a seal, the coat of arms of Arkansas, with the words "Railroad Commission of Arkansas" engraved thereon. They shall be furnished with an office in the capitol at Little Rock with necessary furniture, stationary, supplies and all necessary expenses not to

exceed Five Hundred Dollars ($500.00) per annum, to be paid for on the order of the Governor.

26 SECTION 7. The Commissioners, secretary and stenographer shall be entitled to receive from the State their actual necessary traveling expenses, which shall include the cost only of transportation while traveling on the business of the commission, to be paid out on the order of the Governor upon an itemized statement thereof, sworn to by the party who incurred the expense and approved by the commission.

SECTION 8. Said Commission may hold sessions in any place in the State when deemed necessary to facilitate the discharge of their duties or for the convenience of the parties litigant.

SECTION 9. That every person or corporation operating any railroad or express business in this State is hereby required to furnish said commission, within fifteen days after notice to do so, with the rate sheet and tariff charges for transportation of every kind over such railroad, it shall be the duty of said commission to examine and revise said rate sheet and tariff charges for freight or express matter for each railroad in this State, and determine whether or not, and in what manner, if any, such charges or rates are more than just, and reasonable compensation for the services rendered, and whether or not and in what manner, if any, said charges and rates are in violation of any of the provisions of this act; said commission will make reasonable and just rates of freight, express and passenger tariffs to be observed by all persons and corporations operating any railroad or engaged in transporting persons or property as express or freight in this State; shall make rules and regulations as to charges at any and all points for the necessary hauling and delivering of express and freight; regulate rates and charges for such service on all railroads, as in their judgment, justice to the public and said person or corporation may require; and so make the same conform to the requirements of this act. And said commission, in making such rules and regulations, shall first give the person or corporation to be effected thereby notice to appear

27 and show cause, if any, it can, why no change should be made in the rates then in force, and shall take into consideration the character and nature of the service to be performed, the entire earnings of any railroad or express company, the expense of operating the same, the income and value thereof. And when any tariff of charges is corrected and approved, the said commission shall append a certificate of its approval to said tariff of charges and give notice thereof to any officer or agent of the railroad or express company to be effected thereby, and said tariff and charges shall be kept posted for at least five days before the same shall go into effect. And said commisison shall accordingly fix rates and tariffs of charges for those express companies and railroads, the officers of which fail to furnish rate sheets or tariffs of charges as above required. Said commission shall not alter or change any tariff or charges so approved by it except upon ten days' notice in writing to the person or corporation operating the express company or railroad to be effected by the change, giving

the same an opportunity to be heard; such notice to be by delivering a copy thereof to any officer or agent of such person or corporation.

SECTION 10. That all persons or corporations engaged in the transportation of passengers or property shall and are hereby required to keep posted up at every depot under the control of or in use by such person or corporation, in a conspicuous place therein, plainly and legibly printed schedules which shall state: first, the different kinds and classes of property to be carried; second, the different places between which property shall be carried; third, the rate of freight or express charges for carriage between such places, and for all services connected with the transportation of such property, from its receipt until it is delivered or forwarded. Such schedule shall, as aforesaid, be posted; and every person or corporation engaged, as aforesaid, shall receive, load, unload, transport, store and deliver to the consignee thereof any and all property offered for shipment, whether as freight or express matter at
28 and for charges not greater than those specified in such schedule, as may at any time be in force, and shall, on demand, issue to shippers, duplicate freight or express rec-ipts which shall state the class of freight shipped, the weight and charges, and all the provisions of this act shall apply to all property, and all the services in and about the transportation thereof on one actually or substantially continuous carriage, or a part thereof, and to the compensation therefor, whether the same is carried wholly on one railroad or partly on several railroads, and whether the services are performed, or compensation paid or received by or to one person or corporation alone or in connection with another, or other persons or corporation; provided, that at such points, where freight or express are subject to competition by water routes not controlled by this act nor complying with its provisions, the schedule herein provided for may be posted and go into immediate effect.

SECTION 11. That it shall be unlawful for any person or corporation engaged along or associated with others in the transportation of passengers or property, by railroad in this State, as freight or express, directly or indirectly, to demand or receive from any person, firm, company or corporation, any greater or less rate or amount of compensation than is demanded or received from any other person, firm, company or corporation for substantially similar and contemporaneous services, or to allow any person, firm, company or corporation, directly or indirectly, any rebate, drawback or other advantage in any form, or to make any preference in furnishing cars or motive power. And all persons or corporations engaged as aforesaid, shall furnish, without discrimination or delay, equal and sufficient facilities for the transportation of passengers, the receiving, loading, and unloading, storing, carriage and delivery of all property, of a like character carried by him, them or it, and shall perform, with equal expedition, and at uniform rates, the same kind of service connected with the contemporaneous trans-
29 portation thereof aforesaid. And it shall be unlawful for any person or corporation engaged as aforesaid to enter into

any contract or agreement, by changes of schedule, use of different cars or any other means or device, with intent to delay or prevent the shipment of such property from being continuous from the place of shipment to the place of destination, whether carried on one or more railroads.

SECTION 12. That it shall be unlawful for any person or corporation engaged in the transportation of passengers or property, as mentioned in the preceeding section of this act, to make or enter into any contract, agreement or combination, directly or indirectly, for the pooling of freight, or to pool the freight of the different railroads or lines by dividing between them the gross or net earnings of such railroads or any part thereof, or by equalizing, evening up or dividing the property or passengers carried by such railroads. But nothing in this act shall be so construed as to prevent any person or corporation operating a railroad in this State from issuing or selling reduced *d*ates, emigrant, excursion or *c*ummutation tickets, or from carrying free or at reduced rates any property for schools, churches, fairs, exhibitions or charitable institutions, or for the State or the United States, or any of the United States.

SECTION 13. That it shall be unlawful for any person or corporation engaged as aforesaid to demand or receive any greater amount of compensation for a similar amount or kind of property for receiving, storing, loading, unloading, carrying or delivering the same under similar circumstances and conditions for a shorter than for a longer distance, which includes the shorter distance; and the road of any person or corporation shall include all the railroads in use by it, whether owned and operated by it under a contract, agreement or lease by such corporation or with which it has traffic contract.

SECTION 14. That each and every act, matter or thing in this act declared to be unlawful is hereby prohibited; and in case any person or corporation, as defined in this act, engaged as aforesaid shall do or permit to be done, any act, matter or thing in this act required to be done, or shall be guilty of any of the violations of the provisions of this act, such person or corporation shall be held to pay to the person form or corporation injured thereby, double the amount of damages so sustained, and all costs, to be recovered by the person, firm or corporation so damaged, in any Court having jurisdiction of the amount, where the person or corporation causing the damage can be found, or has an agent or place of business. No action aforesaid shall be sustained unless brought within one year after the cause of action, or within one year after the party complaining, shall have come to the knowledge of his or her right of action. And as many causes of action as may have accrued within the year to any one person, firm or corporation may be joined in the same suit or complaint.

SECTION 15. It shall be the duty of the Railroad Commission to hear all complaints made by any person, firm or corporation against any such tariff of charges so approved; to hear the parties to the controversy in person or by attorney; or both, and may take testimony, orally or in writing, and regulate arguments thereon, and

to conduct the investigation of such complaints in such manner as to the commission may seem best adapted to arrive at the truth, and when any changes are made in any tariff of charges notice thereof shall be given to the person or corporation to be affected thereby; provided, in no instance shall any person or corporation operating a railroad or express company, the schedule of charges which have been submitted to, revised and approved by the commission, be civilly or criminally liable for the making of any charge which has been authorized by the tariff of charges, so approved, or the rules and regulations prescribed by the commission.

SECTION 16. That every person or corporation operating a railroad or express company having an agent or office in the
31 State, shall upon notice to do so, furnish said commision with all the information required to enable said commission to perform its duties relative to the management of their respective lines, and connecting lines, and particularly with copies of all leases, contracts, and agreements with other lines, express companies or sleeping car companies, and shall furnish all such information as to the number of persons employed in the different departments of their service and the wages paid the same, as said commission may require.

SECTION 17. That it shall be the duty of every person or corporation operating any railroad or express company in this State to make annual returns of the business of said railroad or express company to the Railroad Commission of Arkansas, which returns shall embrace all receipts and expenditures of said railroad or express companies in this State, and to be made according to forms furnished by the commission for that purpose; said returns shall be made within thirty (30) days after the end of each year to which they relate; and the first return shall be furnished within thirty (30) days after the passage of this act, unless further time is granted by the commission; said returns shall be sworn to by some officer of said railroad or express company having knowledge of the matter therein stated. Any such person or corporation who shall fail or refuse to make such returns shall be liable to a penalty of fifty dollars ($50.00) for each day of such failure or refusal, such penalty to be recovered by action commenced in the name of the State of Arkansas in any Court having jurisdiction of the amount, such action to be prosecuted as hereinafter provided.

SECTION 18. That if any person or corporation operating a railroad or express company in this State or any receiver, trustee or lessee of any such person or corporation as aforesaid, shall violate any of the provisions of this act, or aid or abet therein, or shall violate the
32 tariff of charges, as fixed by said commission, or any of the rules regarding railroads or express companies, as made by said commission, and for which there is no other penalty prescribed in this act, such person, or corporation, or receiver, trustee or lessee shall be liable to a penalty not less than five hundred dollars ($500.00) nor more than three thousand dollars ($3,000.00) for each violation of this act, or such tariff of charges or rules and regulations, and such penalty may be recovered by an action to

be brought in the name of the State of Arkansas, in the county in which such violation may occur. The commission shall institute such action, and actions for the recovery of the penalties prescribed in this act, through the prosecuting attorney of the proper district, and no such suit shall be dismissed or compromised without the consent of the Court and of said commissioners; and the prosecuting attorney shall be allowed a fee by the Court not to exceed twenty five per cent of the amount collected, and if any prosecuting attorney shall neglect for fifteen days after notice to bring suit, the commission may employ some other attorney at law to bring the same, who shall be allowed a fee to be fixed by the Court, not to exceed twenty-five per cent of the amount collected, and in such case the prosecuting attorney shall not interfere; provided, that in all trials of cases brought for a violation of any tariff charges by said commission, it may be shown in defense that such tariff so fixed was unjust. Nothing in this section shall be so construed as to in any manner interfere with the action for damages as provided in Section Fourteen (14) of this act.

SECTION 19. That the determination of every matter by said commission shall be in writing, and by the clerk spread upon a record kept for that purpose, which shall be a public record, and subject to inspection as such, and proof hereof shall be made by the clerk of said commission, which shall be received in evidence by the Courts as certified copies of any other record. And when any matter has been determined by said commission in the course of any proceeding relating to the regulation or supervision of rail-
33 roads, proof of the fact of such determination, duly certified, as aforesaid, shall be received in all civil actions in the Courts of this State as prima facie evidence that such determination was right and proper.

SECTION 20. That the provisions of this act shall not be construed as to require said commission to investigate or call upon any railroad or express company for its schedule or tariff of charges in the transportation of passengers or property from any point wholly outside of this State, or in any way interfere with such rates or charges.

SECTION 21. That the expenses of the commission shall be paid from the State Treasury on the warrant of the Auditor of State, the same to be paid quarterly, and the clerk of said commission shall, at the end of each quarter, make out an itemized account of all the expenses incurred by said commission, fees paid to officials for issuing and serving notices, process, witness fees, and any other expenses actually paid and which are authorized by this act; the said account shall be examined by said commission and approved by them if correct, and said account so approved shall be filed with the Auditor of State, and he shall issue his warrant on the State Treasurer for the amount of said account, and deliver the same to the clerk of said commission, and the State Treasurer is hereby authorized to pay the same, and all fines and penalties recovered by the provisions of this act shall be paid into the State Treasury to the credit of the general fund.

SECTION 22. That if any person or corporation, operating any railroad or express company shall fail, refuse or neglect, after notice by said commission, to put up its rate sheet, giving its tariff of charges in the manner, place and time as provided in this act, or to furnish said commission with the rate sheet and tariff of charges as provided for in this act, or to furnish cars and motive power for the transportation of freight as provided in this
34 act, such person or corporation shall be subject to a writ of mandamus, to be issued by any Circuit Court of this State, where such person or corporation has an office, agent or place of business to compel a compliance with the provisions and requirements of said act, and such writ shall issue in the name of the State of Arkansas at the relation of said commission appointed under the provisions of this act, and failure to comply with the requirements shall be punishable as for a contempt.

SECTION 23. It shall be the duty of the commission herein provided for, upon the complaint of any person, company or corporation in writing, charging any person or corporation with discrimination or overcharge, to investigate the same and take such action in the premises as is provided in this act and the facts in the case justify.

SECTION 24. Be it further enacted that all the provisions of this act shall apply to and include all persons, companies or corporations carrying property on any railroad as express matter and known as express companies, as fully as if such persons, companies or corporations were specially named and designated herein; and the words "engaged in transporting persons and property" shall be held to include all carriers of property by railroad, whether the same are designated as freight or express.

SECTION 25. The Commissioners, or either of them, shall have the right at such times as they may deem necessary, to inspect the books and papers of any railroad company, and to examine under oath any officer, agent or employee of such railroad in relation to the business and affairs of the same. If any railroad shall refuse to permit the Commissioners, or either of them, to examine its books and papers, said railroad company shall, for each offense, pay to the State of Arkansas not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00) for each day it shall so fail and refuse.

35 SECTION 26. Any officer, agent or employee of any railroad company who shall, under proper demand, fail or refuse to exhibit to the Commissioners, or either of them, any book or paper of such railroad company which is in the possession or control of such officer, agent or employee, shall be deemed guilty of a misdemeanor, and upon conviction in any Court having jurisdiction thereof shall be fined for each offense a sum not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00).

SECTION 27. The commission shall ascertain as nearly as practicable the amount of money expended in the construction and equipment per mile of every railroad in Arkansas, the amount of money expended to procure the right-of-way, the amount of money

it would require to reconstruct the roadbed, track, depots and to replace all physical properties belonging to the railroad. It shall also ascertain the amounts paid for salaries to the officers of the railroad, the wages paid to employees and the operating expenses of each and every railroad in the State, including repairs and interest on indebtedness. When the information required by this section is obtained it shall be communicated to the Attorney General by report, and a duplicate of the same filed with the Auditor for public use, and said information shall be printed from time to time in the annual report of the commission.

SECTION 28. The commission shall make and submit to the Governor annual reports, containing a full and complete account of the transactions of their office, together with the information gathered by such commission as herein required, and such other facts, suggestions and recommendations as may be by them deemed necessary, which report shall be published as the reports of the heads of departments.

SECTION 29. The said commission, in making examination or investigation provided for in this act, shall have power to issue subpœnas for the attendance of witnesses, and every witness who
36 shall appear by order of the commission at a place outside of the county of his residence shall receive for this attendance one dollar and fifty cents ($1.50) per day and five cents per mile, traveled by the nearest practicable route, in going to and returning from the place of meeting of said commission, but witnesses who reside within the county in which the commission meets shall receive one dollar and fifty cents ($1.50) per day for each day's attendance, but no mileage, which shall be paid upon the warrant of the Auditor, upon the presentation of the proper vouchers, sworn to by such witness approved by the chairman of the commission; provided, that no witness shall be entitled to any witness fees or mileage who is directly or indirectly interested in any railroad in this State, or out of it, or who is in anywise interested in any stock, bonds, mortgage, security or earnings of any such road, or who shall be the agent or employee of such road, or any officer thereof, when summoned at the instance of such railroad, and no witness furnished with free transportation shall receive pay for the distance he may have traveled on such free transportation. In case any witness shall fail or refuse to obey such subpœna said commission may issue an attachment for said witness, directed to any sheriff or any constable in the State of Arkansas, and compel him to attend before the commission and give his testimony upon such matters as shall be lawfully required of them. If a witness, after being duly summoned, shall fail or refuse to attend or to answer any question propounded to him and which he would be required to answer if in Court, the commission shall have the power to fine and imprison such witness for contempt, in the same manner that a judge of the Circuit Court might do under similar circumstances. The claim that any such testimony may tend to criminate the person giving it shall not excuse such witness from testifying; but the person so testifying shall not be prosecuted or subject to any penalty or forfeiture for or on

account of any transaction, matter or thing concerning in
37 any way such case or proceeding; provided, that no person shall be exempt from perjury in so testifying; provided further, the commission shall in all cases have the right to issue proper process and take depositions instead of compelling personal attendance of witnesses. The sheriff or constable executing any process under the provisions of this bill shall receive such compensation as may be allowed by the commission, not to exceed fees as now prescribed by law.

SECTION 30. That the remidies hereby given shall be regarded as cumulative, and that this act shall not be construed as repealing any statute giving such remedies.

SECTION 31. All acts and parts of acts inconsistent with this act are hereby repealed, and this act shall take effect and be in force from and after its passage.

Approved March 11th, 1899.

EXHIBIT "B."

Acts of Arkansas—1899.

Act CXIX.

An Act Supplemental to an Act to Provide for the Regulation of Railroad Freight and Passenger Tariffs in this State, Approved 11th Day of March, 1899.

Sections.

1. Time of meeting and term of Commissioners.
2. Commission authorized to employ an expert when necessary.
3. Commission to ask for transportation for themselves and employés.
4. Main lines required to enter into traffic contracts with short and connecting lines. Refusal may be forced by suit.
5. In cases before commission unsuccessful parties to pay
38 costs.
6. Commission to be furnished offices in Little Rock. Expense of furnishing and maintaining same fixed.
7. Salaries to be paid monthly. Incidental expenses as commission desires.
8. Roads permitted to give reduced rates and free transportation to certain persons.
9. Each commissioner and secretary may administer oaths and certify to accounts.
10. Repeals all laws in conflict and act takes effect from passage.

Be it Enacted by the General Assembly of the State of Arkansas:

SECTION 1. The Railroad Commission to be elected at any general election shall enter upon the duties of their office at the meeting of the General Assembly that shall meet next after their election, and

shall hold their offices for two years, or until their successors are elected and qualified.

SECTION 2. The said Commissioners are authorized, whenever necessary in their judgment, for the intelligent performance of their duties, to employ an expert, whose remuneration shall be fixed by the board and paid as their employés, but such service shall cease whenever the occasion for its employment shall te-minate.

SECTION 3. Said Commission shall make requisition, in the name of the State upon any railroad in the State for the transportation of themselves and employés when engaged in the duties of said commission, and for no other purpose, it shall be lawful for any such road to furnish the same without charge.

SECTION 4. Should any railroad company now owning or hereafter desiring to build a road to connect with any main line, and should the management of any such main line refuse to enter into a reasonable joint traffic contract with it, such company may file its petition with the commission, setting forth its case, and if the commission shall find that there is a reasonable and public demand for such proposed line, it shall approve the same and fix and establish joint traffic rates therefor. Thereupon, such company may file its bill against any such company owning the main line, either in the Pulaski Chancery Court or in the court of the County wherein the junction of the two roads is to be formed for the purpose of having such order established by decree, and the case shall take precedence in said court. Appeals from any decree shall be perfected within ninety days without privilege of renewal, and shall also take precedence in the Supreme Court.

SECTION 5. That in all cases of contest before the commission, the unsuccessful party shall be taxed with the costs, unless otherwise ordered by the Board of Commissioners.

SECTION 6. The Commission shall be furnished offices at Little Rock, with necessary furniture, stationary, supplies, and the necessary expenses thereof, not to exceed one thousand dollars ($1,000.00) for the first year, and not to exceed five hundred dollars ($500.00) for subsequent years, which shall be paid as required by law.

SECTION 7. The salaries and expenses of the commission shall be paid monthly upon certificates and vouchers, as now required by law, and if it becomes necessary to pay for transportation, costs and other expenses of like nature during any current month, the same may be drawn in advance upon the certificate of the commissioners, but to be embraced thereafter in the monthly statement to be made as required by law, showing the same to have been paid.

SECTION 8. Nothing in the law shall prevent the carriage, storage, or hauling free, or at reduced rates, for any city, county or town government; or the free carriage of destitute or indigent persons, or ministers of the gospel; nor to prevent the railroads from giving free transportation or transportation at reduced rates to the inmates of hospitals, eleemosynary and charitable institutions, and nothing therein shall be construed to prevent railroads from giving free transportation to any railroad officer, agent, or employé, attorney, stockholder or director of the railroad company.

SECTION 9. Each commissioner and the secretary shall have power to administer all oaths and to certify to all official acts done by the commission.

SECTION 10. All laws and parts of laws inconsistent with this act are hereby repealed, and this act shall take effect and be in force from and after its passage.

Approved April 15th, 1899.

EXHIBIT "C."

Act 193.

An Act to Regulate Freight Transportation by Railroad Companies Doing Business in the State of Arkansas.

Be it Enacted by the General Assembly of the State of Arkansas:

SECTION 1. That when a shipper makes a written application to the station agent of a railroad company for a car or cars, to be loaded with any kind of freight embraced in the tariff of said company, stating in said application the character of freight, and its final destination, the railroad company shall furnish same at the place of shipment within six days from 7 o'clock A. M. the day following such application. Or, when the shipper making such application specified a future day on which he desires to make a shipment, giving not less than six days' notice thereof, computing from 7 o'clock A. M. the day following such application, the railroad company shall furnish such car or cars on the day specified in the application, said station agent shall give applicant a receipt for his application for car or cars, with date of filing said application. Provided, that it shall be the duty of every railroad company in this State to exchange loaded and empty cars in the transportation of such freight for the purpose of facilitating its movement with every railroad with which it connects forming any part
41 of the route for the shipment of such freight or with which it has or participates in joint rates for such shipments; and for each of such railroad companies forming such route or having or participating in such joint rates on demand of such connecting line to furnish to it, within reasonable time after such loaded cars are delivered, as many empty cars suitable for carrying such freight as may be delivered to it loaded by such connecting carrier for the purpose of transportation over its line, or for delivery to any point on its line; and upon demand of the owner thereof, it shall be the duty of every railroad company receiving the cars of another to return the same within a reasonable time after demand and within the time and according to the rules and regulations prescribed by the Railroad Commission of the State:

Provided, this act shall not apply to railroads under two miles in length, and to railroads that are not public carriers. For failure to comply with this action the railroad company so offending shall forfeit and pay to the shipper applying, the sum of five dollars per car per day, or fraction of a day's delay after-expiration of free

time, upon demand in writing, made within thirty days thereafter by the shipper:

Provided, failure on the part of the shipper to make the demand of the railroad company shall not release the railroad company from its liability to the shipper for said forfeiture or demurrage charges.

SECTION 2. When freight in car loads or less is tendered to a railroad company, and correct shipping instructions given, the railroad agent must immediately receive the same for shipment, and issue bills of lading therefor, and whenever such shipments have been so received by any railroad company, they must be forwarded at the rate of not less than fifty (50) miles per day of twenty-four hours, computing from 7 o'clock A. M. the day following receipt of shipment, and for failure to receive and transport such shipments within the time prescribed, the railroad company so offending
42 shall forfeit and pay to the shipper the sum of five dollars per car per day, or fraction thereof, and on all car load freight, one cent per hundred pounds per day or fraction thereof, on freight in less than car loads, with a minimum charge of five cents for any one package, upon demand in writing by the shipper, or other party whose interest is affected by such delay; provided, that in computing the time of freight in transit, there shall be allowed twenty-four hours at each point where transferring from one railroad to another or rehandling of freight is involved and in all computations of time between shippers and carriers Sundays and legal holidays are to be excluded; and in the transportation of cattle, sheep, swine and other animals, the carrier shall be governed by the provisions of the Federal Statutes in watering, feeding, and rest of said animals, and such delay shall be counted as free time.

The period during which the movement of freight is suspended on account of accident, or any cause not within the power of the railroad company to prevent, shall be added to the free time allowed in this section and counted as additional free time.

SECTION 3. Railroad companies shall, within twenty-four hours after the arrival of shipments, give notice, by mail or otherwise, to consignee of the arrival of shipments, together with the weight and amount of freight charges due therefor; and where goods or freight in carload quantities arrive, such notice shall contain also identifying numbers, letter and initials of the car or cars, and if transferred in transit, the numper and initials of the car in which originally shipped. Any railroad company failing to give such notice shall forfeit or pay to the shipper, or other party whose interest is affected, the sum of five dollars per car per day, or fractions of a day's delay, on all carload shipments, and one cent per hundred pounds per day, or fraction thereof, on freight in less than carloads, with a minimum charge of five cents for any one package, after the expiration of the said twenty-four hours;
43 provided, that not more than five dollars per day be charged for any one consignment not in excess of a carload.

SECTION 4. Railroad companies shall deliver freight at their depots or warehouses, or, in case of shipments for track delivery,

shall place loaded cars at an accessible place for unloading within twenty-four hours after arrival, cumputing from 7 o'clock A. M. the day following arrival of same. Except that carload shipments for track delivery at local stations having not more than one team track, shall be placed at an accessible point for unloading by the conductor of the train on which the car arrives. The shipper or consignee shall be paid five dollars per car per day, for each day or a fraction of a day such delivery is so delayed.

SECTION 5. All carload freight, or freight carried at carload rates, and all freight in cars, whether full carload or not, taking track delivery, shall be subject to the demurrage or car service charges, prescribed in this act.

SECTION 6. A shipper, on whose order a car or cars have been placed for loading, shall be allowed forty-eight hours for the loading of such car or cars cumputing from 7 o'clock A. M. the day after such car or cars have been placed subject to the order of the shipper, and thereafter a demurrage of not more than five dollars per car per day, or fraction of day, may be assessed and collected on all such cars as have not been tendered to the railroad company with shipping instructions within said forty-eight hours; provided, however, that should the shipper fail to begin loading within forty-eight hours after the expiration of the free time, the railroad company shall consider the car or cars released, and may assess and collect ten dollars on each car, covering the demurreage then due. Provided, that such delay be not caused by unavoidable accident or strike, and said cars be at once released.

Railroad companies shall not be compelled to furnish cars
44 for future shipments to parties in default as to the payment of demurrage charges, herein last provided for, until such demurrage charges have been paid, if, after placing the car or cars required by this act, the railroad company shall, during or after free time, temporarily remove all or any of them, or in any way prevent, obstruct or delay the loading of same, the shipper shall not be chargeable with the delay caused thereby.

When by reason of delay or irregularity on the part of the railroad company in filling orders, cars are bunched in excess of the ability of the shipper to load, as indicated in his application, the shipper shall be allowed separate and distinct periods of free time within which to load the car or cars specified in each separate application.

SECTION 7. A car or cars detained or held at the point of shipment for want of proper shipping instructions or by reason of imperfect or excessive loading, where loading is done by shipper, shall be subject to a demurrage charge of five dollars per car per day, or fraction of a day said car or cars are so detained or held. In case of imperfect or excessive loading, the shipper shall be notified thereof as early as practicable after said car or cars have been received from him, in which case car service charges shall begin at the time of notification.

Provided, no demurrage charge shall be collected by the rail-

road company after said car has been removed from point of shipment, as provided in this section.

SECTION 8. Legal notice, as referred to in this act, may be either actual or constructive. Where the consignee or his agent is personally served with notice of the arrival of freight at or before six P. M. of any day, free time begins at 7 o'clock A. M. on the day after such notice has been given.

Constructive notice referred to consists of posting notice by mail to consignee. Where this mode of giving notice is adopted there shall be forty-eight hours' additional free time; provided,
45 however that when in any case where notice of arrival is given by mail that said notice shall be by registered letter, that notice shall date from the receipt of said registered letter.

SECTION 9. All package freight unloaded by railroad companies in their depots and warehouses, and all freight which in order to release cars unloaded in the yard space of a railroad company which is not removed by the owner thereof from custody of the railroad company within forty-eight hours, computing from 7 o'clock A. M. of the day following legal notice of arrival, may be subject to the charge of storage for each day, or fraction of a day it may remain in the custody of the railroad company, as follows: On less than carloads, not more than one cent per hundred pounds per day, or fraction thereof; in car load quantities not more than ten cents per ton or 2,000 pounds per day or fraction thereof, but not exceeding one dollar per car per day, or fraction of a day; provided, that in no case shall the amount so collected for storage of a less than carload shipment exceed the amount authorized to be charged as storage on a carload or similar freight for the same length of time not unloaded from car, as provided by this act,

SECTION 10. Loaded cars containing fertilizers, hay, coal, coke, brick, sand and lumber in covered cars, and the following cars in bulk: meat, potatoes, grain and grain products, cotton seed and cotton seed hulls taking track delivery, which are to be unloaded by consignee but are not unloaded within seventy-two hours, computed from 7 o'clock A. M. the day following the day notice of arrival is given (having been placed at an accessible point for unloading) may be subject thereafter to a charge for demurrage of five dollars per car for each day, or fraction of a day that they may remain loaded in possession of the railroad company. All other loaded cars, taking track delivery, to be unloaded by the consignee, shall be limited to forty-eight hours of free time; provided, however, that after placing a car or cars, as re-
46 quired in this act, the railroad company shall during or after free time, temporarily remove all or any of them, or in any way obstruct the unloading of same, the consignee shall not be chargeable with the delay caused thereby.

Provided, that when, on account of delay or irregularity in transportation, cars are bunched in transit, and delivered to consignee in numbers beyond his reasonable ascertained ability to unload within the free time prescribed in this act, he shall be allowed by the carrier such additional time as may be necessary to unload

cars so in excess by the exercise of due and usual diligence on the part of consignee.

SECTION 11. Whenever the weather, during the period of free time, is so severe, inclement or rainy, that it is impossible or impracticable to secure means of loading or unloading freight, or when, from the nature of the goods, loading or unloading would cause injury or damage, such time shall be added to the free period and no demurrage charges shall be allowed for such additional free time. This applies to the state of the weather during business hours.

SECTION 12. A consignee or consignor five miles or more from the depot, and whose freight is destined to or from his place of business or residence so located, shall not be subject to storage or demurrage charges allowed in this act until a sufficient time has elapsed after notice from said consignee or consignor to remove or load said goods by the exercise of *the* ordinary diligence. But the time limit for loading or unloading shall not exceed five days.

SECTION 13. Incoming carload freight, coming under the provisions of sections 11 and 12, may be stored by railroad companies in depots or warehouses at the expense of the owner, if same is not removed before demurrage charges attach; provided, that daily storage charges on such freight shall not exceed one dollar
47 ($1.00) per day.

SECTION 14. If a consignee shall refuse to accept freight tendered in pursuance of the bill of lading, the carrier charged with the duty of delivery shall give legal notice to the consignor of such refusal, and if he shall not, within three days thereafter, give directions for reshipment or unloading or other disposition of such goods, he shall thenceforth become liable to such carrier for storage on such goods, or demurrage upon the car or cars in which they are stored, to the same extent and at the same rates as such charges are now, under like circumstances, by this act imposed upon consignees who neglect or refuse, after notice of arrival to remove freight of like character from the depots or cars of carrier. A consignee who has once refused to accept a consignment of goods shall not thereafter be entitled to receive the same, except upon payment of all charges for storage or demurrage which have accrued, and if the consignee of freight in carloads or less than carloads, shall fail or neglect to remove such freight within three days after the expiration of free time, then the carrier shall, through the agent at point of shipment, so notify the shipper unless the consignee has signified his acceptance of the property. Said notice may either be served personally or given by mail.

SECTION 15. When consignors ship goods consigned to order, but express in their bills of lading or shipping directions, the name of a person at destination to notify, it shall be the duty of the railroad company to give legal notice to such party in the same way, and under the same rule, as if the shipment had been made direct to him. But when consignors do not comply with this condition, the railroad company shall give notice only to such consignors, pro-

vided, that, at the expiration of free time the carrier shall give notice thereof to the consignor.

SECTION 16. It shall be unlawful for any railroad company, its officers or agents, to discriminate between person or persons,
48 firms or corporations, or places in storage, demurrage charges, furnishing cars, or transportation and delivery of freights. No pooling rebate, drawback, or similar device, either direct or indirect will be allowed and shall be unlawful. Provided, nothing in this act shall be so construed as to prohibit any person or corporation operating a railroad in this State from transporting, delivering or storing freight free of charge or at reduced rates for any city, county, or town government, or for any State of the United States, or any property for school, churches, hospitals, fairs, exhibitions, eleemosynary and charitable institutions or indigent persons, or employés of such corporations for their own personal use.

SECTION 17. Every person, company or corporation operating any railroad in this State, which connects with any other railroad in this State, and which forms a part of a continuous line of railway communication to any point within the State, such companies or corporations, respectively, shall afford all due and reasonable facilities for receiving and forwarding by one of such railroads, all the traffic arising by the other, and shall promptly forward the same at through rates, without giving any undue preference or advantage to or in favor of any particular person or company, or any particular description of traffic in any respect whatever; but preference shall be given to live stock and perishable freight, said connecting lines shall as fully comply with the provisions of this act as if they were the original receivers of said freight or traffic to be shipped or transported over their own lines, and said connecting railroads, that receives a car or cars from a connecting railroad in this State for transportation wholly in this State, shall return said car or cars, or cars of like character on demand, in a reasonable time after such car or cars are delivered to consignee.

Inter-state railroads shall furnish cars on application for inter-state shipments the same in all respects as other cars to be
49 furnished by inter-state railroads under the provisions of this act.

SECTION 18. The term railroad company, railroad companies, or carrier contained in this act, shall be deemed and taken to mean all corporations, companies or individuals now owning or which may hereafter own or operate any railroad in this State, whether as owner, contractor, lessee, mortgagee, trustee, assignee or receiver, and their officers and agents.

SECTION 19. All forfeitures, charges and demurrage that accrue to either shipper or railroad company under this act, *amy* be recovered in any Court having jurisdiction.

SECTION 20. Any railroad employé who shall demand or receive from any shipper extra pay, over and above the legal freight rate, for placing or furnishing a car or cars for the shipment of freight, shall be guilty of a misdemeanor, and on conviction, shall be fined in any sum not less than one hundred nor more than two hundred

dollars, and each car so placed or furnished shall be deemed a separate offense, and any shipper or other person who shall give or offer to give any such extra pay to any such employee, shall be guilty of a misdemeanor and shall be fined in any sum not less than one hundred nor more than two hundred dollars.

SECTION 21. In all actions at law against any railroad company, its assignees, lessees or other person or persons owning or operating any railroad in this State, or partly in this State, for the violation of the provisions of this act regulating the transportation of freight, or in case any person or corporation as defined in this act engaged as aforesaid, shall not do or permit to be done any act, matter or thing in this act required to be done, such person or corporation shall be held to pay to the person, firm or corporation injured thereby the actual amount of damages so sustained, to be recovered by the person, firm or corporation so damaged, in any court having
50 jurisdiction of the amount, where the person or corporation causing the damage can be found or has an agent or place of business. No action aforesaid shall be sustained unless brought within one year after the cause of action accrued, or within one year after the party complaining shall have come to the knowledge of his or her right of action. Provided, that no action shall be brought after two years from time right of action accrues, and as many causes of action as may have accrued within the year to any one person, firm or corporation, including damages, forfeitures, demurrage, etc., may be joined in the suit or complaint.

SECTION 22. If any person or corporation operating a railroad in this State for the transportation of freight, or any receiver, trustee or lessee of any such person or corporation, as aforesaid, or any other person or corporation as defined in this act, its employees or agents, shall violate any of the provisions of this act or aid or abet therein, or shall violate the tariff of charges, or the rules of the Railroad Commission, as fixed by said Commission, regarding railroad companies in furnishing cars on application of shippers, transportation, delivery and storage of freight; forbidding pooling, discrimination, rebate, drawback, or other similar device either direct or indirect, or any of the rules made by said commission, based upon this act, and for which there is no other penalty prescribed in this act, such person or corporation, or receiver, trustee, lessee, or any other person or corporation, as defined in this act, shall be liable to a penalty of not less than five hundred nor more than three thousand dollars for each violation of this act, or such rules and regulations of said commission based on this act, and such penalty may be recovered by an action to be brought in the name of the State of Arkansas, in the county in which such violation may occur. The commission shall institute such action, or actions, for the recovery of penalties prescribed in this act through the prosecuting attorney of the proper district, and no such suit shall be dismissed or compromised
51 without the consent of the Court and said commissioners; and the prosecuting attorney shall be allowed a fee by the Court, not to exceed twenty-five per cent of the amount collected, and if any prosecuting attorney shall neglect for fifteen days after

notice to bring suit, the commission shall employ some other competent attorney at law to bring the same, who shall be allowed a fee therefor to be fixed by the Court not to exceed twenty-five per cent of the amount collected and in such case the prosecuting attorney shall not interfere.

Nothing in this section shall be construed as to in any manner interfere with the action for damages as provided in section 21 of this act.

SECTION 23. The Commission shall formulate rules for the furnishing of cars by railroad companies to shippers, transportation and delivery of freight and other requirements, in compliance with this act within thirty days after its passage and publish said rules at length once a week for four consecutive weeks in one of the newspapers of general circulation published in the City of Little Rock, within sixty days after its passage.

SECTION 24. The remedies hereby given shall be regarded as cumulative and this act shall not be construed as repealing any statute giving such remedies.

SECTION 25. This act shall take effect and be in force sixty days after its passage.

Approved April 19th, 1907.

EXHIBIT "D".

Office of Railroad Commission of Arkansas.

Order No. 346.

Effective June 19, 1907.

52 It is ordered by the commission that its rules be amended, by the adoption of a new rule to be known as Rule No. 46, which rule shall read as follows, to-wit:

SECTION 1. When a shipper makes a written application to the station agent of a railroad company for a car or cars, to be loaded with any kind of freight embraced in the tariff of said company, stating in said application the character of said freight, and its final destination, the railroad company shall furnish same at the place of shipment within six days from 7 o'clock A. M. the day following such application.

Or, when the shipper making such application specifies a future day on which he desires to make a shipment, giving not less than six days' notice thereof, computing from 7 o'clock A. M. the day following such application, the railroad company shall furnish such car or cars on the day specified in the application, said station agent shall give the applicant a receipt for his application for car or cars with date of filing said application; provided, that it shall be the duty of every railroad company in this State to exchange loaded and empty cars in the transportation of such freight for the purpose of facilitating its movement with every railroad with which it connects, forming any part of the route for the shipment of such freight, or

with which it has or participates in joint rates for such shipments; and for each of such railroad companies forming such route or having or participating in such joint rates on demand of such connecting line to furnish to it, within reasonable time after such loaded cars are delivered, as many empty cars suitable for carrying such freight as may be delivered to it loaded by such connecting carrier for the purpose of transporting over its line or for delivery to any point on its line; and upon demand of the owner thereof, it shall be the duty of every such railroad company receiving the cars of another to return the same within a reasonable time after demand therefor; and
53 within the time and according to the rules and regulations prescribed by the Railroad Commission of this State; provided, this rule shall not apply to railroads under two miles in length, and to railroads that are not public carriers.

For failure to comply with this section the railroad company so offending shall forfeit and pay to the shipper applying the sum of five dollars per car per day or fraction of a day's delay after expiration of free time, upon demand in writing, made within thirty days thereafter by the shipper; provided, failure on the part of the shipper to make the demand on the railroad company shall not release the railroad company from its liability to the shipper from said forfeiture or demurrage charges.

SECTION 2. When freight in car loads or less is tendered to a railroad company, and correct shipping instructions are given, the railroad agent must immediately receive the same for shipment and issue bills of lading therefor, and whenever such shipments have been so received by any railroad company they must be carried forward at the rate of not less than fifty (50) miles per day of twenty-four hours, computing from 7 o'clock A. M. the day following receipt of shipment, and for failure to receive and transport such shipments within the time prescribed, the railroad company so offending shall forfeit and pay to the shipper the sum of five dollars per car per day, or fraction thereof, on all carload freight, and one cent per hundred pounds per day, or fraction thereof, on freight in less than car loads, with a minimum charge of five cents for any one package, upon demand in writing, by the shipper and other party whose interest is affected by such delay; provided, that in computing the time of freight in transit there shall be allowed twenty-four hours at each point where transferring from one railroad to another or rehandling of freight is involved, and in all computations of time between shipper and carrier, Sundays and legal holidays are to be excluded;
54 and in the transportation of sheep, swine and other animals, the carrier shall be governed by the provisions of the Federal Statutes in watering, feeding and rest of said animals, and such delay shall be counted as free time. The period during which the movement of freight is suspended on account of accident, or any cause not within the power of the railroad company to prevent shall be added to the free time allowed in this section, and counted as additional free time.

SECTION 3. Railroad companies shall, within twenty-four hours after arrival of shipments, give notice, by mail or otherwise, to con-

signee of the arrival of shipment, together with the weight and amount of freight charges due thereon; and where goods or freight in carload quantities arrive, such notice shall contain also identifying numbers, letter and initials of the car or cars, and if transferred in transit the number and initials of the car in which originally shipped. Any railroad company failing to give notice shall forfeit and pay to the shipper or other party whose interest is affected the sum of five dollars per car per day or fraction of day's delay on all carload shipments, and one cent per hundred pounds per day, or fraction thereof, on freight in less than carloads, with a minimum charge of five cents for any one package, after the expiration of the said twenty-four hours; provided, that not more than five dollars per day be charged for any one consignment not in excess of a car load.

SECTION 4. Railroad companies shall deliver freight at their depots or warehouses, or, in case of shipment for track delivery, shall place loaded cars at an accessible place for unloading within twenty-four hours after arrival, computing from seven o'clock A. M. the day following arrival of same; except that carload shipments for track delivery at local stations having not more than one team track shall be placed at an accessible point for unloading by the conductor of the train on which the car arrives. The shipper or consignees shall be paid five dollars per car per day for each day, or fraction of a day, such delivery is delayed.

55 SECTION 5. All carload freight, or freight carried at carload rates, and all freight in cars, whether full carloads or not, taking track delivery, shall be subject to the demurrage, or car-service charges prescribed in this rule.

SECTION 6. A shipper, on whose order a car or cars have been placed for *un*loading, shall be allowed forty-eight hours for the loading of such car or cars, computing time from 7 o'clock A. M. the day after such car or cars have be- placed, subject to the order of the shipper, and thereafter a demurrage charge of not more than five dollars per car per day, or fraction of a day, may be assessed and collected on all such cars, as have not been tendered to the railroad company, with shipping instructions, within said forty-eight hours; provided, however, that should the shipper fail to begin loading within forty-eight hours after the expiration of free time, the railroad company shall consider the car or cars released, and may assess and collect ten dollars on each car, covering the demurrage then due; provided that such delay be not caused by unavoidable accident or strike, and said cars be at once released. The railroad companies shall not be compelled to furnish cars for future shipments to parties in default, as to the payment of demurrage charges herein last provided for, until such demurrage charges have been paid. If, after placing the car or cars required by this rule, the railroad company shall, during or after free time, temporarily remove all or any of them, or in any way prevent, obstruct, or delay the loading of same, the shipper shall not be chargeable with the delay caused thereby.

When, by reason of delay or irregularity on the part of the rail-

road company in filling orders, cars are bunched in excess of the ability of the shipper to load as indicated in his application, the shipper shall be allowed separate and distinct periods of free time within which to load the car or cars specified in each separate application.

56 SECTION 7. A car or cars destined or held at point of shipment for want of shipping instruction, or by reason of imperfect or excessive loading, where loading is done by shippers, shall be subject to a demurrage charge of five dollars per car per day, or fraction of a day, said car or cars are so detained or held. In case of imperfect or excessive loading, the shipper shall be notified thereof, as early as practicable after said car or cars have been received from him, in which case car service charges shall begin at the time of notification; provided, no demurrage charge shall be collected by the railroad company after said car has been removed from point of shipment, as provided in this rule.

SECTION 8. Legal notice, as referred to in the rule, may be either actual or constructive. Where the consignee or his agent is personally served with the notice of the arrival of freight at or before 6 P. M. of any day, free time begins at 7 o'clock A. M. on the day after such notice has been given. Constructive notice referred to consists of posting notice by mail to consignee. When this mode of giving notice is adopted there shall be forty-eight hours additional free time; provided, however, that when in any case where notice of arrival is given by mail that said notice shall be by registered letter, that said notice shall date from the receipt of said registered letter.

SECTION 9. All package freight unloaded by railroad companies in their depots and warehouses, and all freight which, in order to release cars, is unloaded in the yard-space of a railroad company which is not removed by the owner thereof from the custody of the railroad company within forty-eight hours, computing from seven o'clock A. M. of the day following legal notice of arrival, may be subject to the charge of storage for each day, or fraction of a day, it may remain in the custody of the railroad company, as follows: On less than carloads, not more than one cent per hundred pounds per day, or fraction thereof; in carload quantities, not more

57 than ten cents per ton of 2,000 pounds per day or fraction thereof, but not exceeding one dollar per car per day; provided, that in no case shall the amount so collected for storage of a less than carload shipment exceed the amount authorized to be charged as storage on a carload of similar freight for the same length of time when not unloaded from car, as provided by this rule.

SECTION 10. Loaded cars containing fe-tilizers, hay, coal, coke, sand and lumber in covered cars, and the following cars in bulk: meat, potatoes, grain, and grain products, cotton seed and cotton seed hulls, taking track delivery, which are to be unloaded by consignee, but are not unloaded within seventy-two hours, computed from seven o'clock A. M. the day following the day legal notice of arrival is given (having been placed at an accessible point for unloading)

may be subject thereafter to a charge for demurrage of five dollars per car for each day, or fraction of a day, that they may remain loaded in possession of the railroad company. All other loaded cars taking track delivery, to be unloaded by consignee, shall be limited to forty-eight hours of free time; provided, however, that — after placing a car or cars as required in this rule, the railroad company shall, during or after free time, temporarily remove all or any of them, or in any way obstruct the unloading of same, the consignee shall not be chargeable with the delay caused thereby; provided, that when, on account of delay or irregularity in transportation, cars are bunched in transit and delivered to consignee in numbers beyond his reasonable ascertained ability to unload within the free time prescribed in this rule, he shall be allowed by the carrier such additional time as may be necessary to unload cars so in excess by the exercise of due and usual diligence on the part of consignee.

SECTION 11. Whenever the weather, during the period of free time, is so severe, inclement, or rainy, that it is impossible or impracticable to secure means of loading or unloading freight,
58 or when, from the nature of the goods, loading or unloading would cause injury or damage, such time shall be added to the free period, and no demurrage charge shall be allowed for such additional free time. This applies to the state of the weather during business hours.

SECTION 12. A consignee or consignor five miles or more from the depot, and whose freight is destined to or from his place of business or residence so located, shall *bot* be subject to storage or demurrage charges allowed in this rule until a sufficient time has elapsed after notice for said consignee or consignor to remove or load said goods by the exercise of ordinary diligence, but the time limit for loading or unloading shall not exceed five days.

SECTION 13. Incoming carload freight coming under the provisions of sections 11 and 12 may be stored by railroad companies in depots or warehouses at the expense of the owner, if same is not removed before demurrage charges attach; provided, that daily storage charge on such freight shall not exceed one dollar per car.

SECTION 14. If a consignee shall refuse to accept freight tendered in pursuance of the bill of lading, the carrier charged with the duty of delivery shall give legal notice to the consignor of such refusal, and if he shall not within three days thereafter give directions for reshipment or unloading, or other disposition of such goods, he shall thenceforth become liable to such carrier for storage on such goods or demurrage upon the car or cars in which they are stored, to the same extent and at the same rate as such charges are now, under like circumstances, by this rule imposed upon consignees who neglect or refuse, after notice of arrival, to remove freight of like character from the depots or cars of carrier. A consignee who has once refused to accept a consignment of goods shall not thereafter be entitled to receive the same except on payment of all charges for storage or demurrage which have accrued, and if the consignee of freight in carloads, or less than car loads shall fail or neg-
59 lect to remove such freight within three days after the expiration of free time, then the carrier shall, through the

agent at point of shipment, so notify the shipper, unless the con signee has signified his acceptance of the property. Said notic may either be served personally or given by mail.

SECTION 15. When consignors ship goods consigned to order, bu express in their bill of lading or shipping directions the name o the person at destination to notify, it shall be the duty of the rai road company to give legal notice to such party in the same way and under the same rule, as if the shipment had been made direct t him. But when consignors do not comply with this condition, th railroad company shall give such notice only to consignors; pro vided, that at the expiration of free time the carrier shall give notic to the consignor.

SECTION 16. No railroad company, its officers, or agents, shal be allowed to discriminate between persons, firms, or corporations or places in storage, demurrage charges, furnishing cars, or trans portation and delivery of freights. No pooling, rebate, drawback, o any similar device, either direct or indirect, shall be allowed in thi State. Provided, nothing in this rule shall be so construed as t prohibit any person or corporation operating a railroad in this Stat from transporting, delivering or storing freight free of charge o at reduced rates, for any city, county or town government, or fo any State, or the United States, or any property for schools, churches hospitals, fairs, exhibitions, eleemosynary and charitable institutions or indigent persons, or employés of such corporations, for their own personal use.

SECTION 17. Every person, company or corporation operatin any railroad in this State which connects with any other railroad i this State, and which forms a part of a continuous line of railway communication to any point within this State, such companies and corporations, respectively, shall afford all due and reasonabl facilities for forwarding and receiving by one of such rail roads, all the traffic arising by the other, and shall promptly forward the same at through rates, without giving undue preference or advantage to or in favor of any particular person or company, o any particular description of traffic in any respect whatsoever, bu preference shall be given to live stock and perishable freight; said connecting lines, shall as fully comply with the provisions of thi rule as if they were the original receivers of said freight or traffi to be shipped or transported over their own lines, and said connect ing railroads, that receive a car or cars from a connecting railroad in this State, for transportation wholly in this State, shall return said car or cars, or cars of like character, on demand, in a reasonable time after such car or cars are delivered to consignee.

Interstate railroads shall furnish cars on application for inter state shipments, the same in all respects as other cars are to be fur nished by intrastate railroads under the provisions of this rule.

SECTION 18. The term railroad company, railroad companies, or carrier, contained in this rule shall be deemed and taken to mean all corporations, companies, or individuals, now owning, or which may hereafter own, or operate any railroad in this State, whether as

owner, contractor, lessee, mortgagee, trustee, assignee or receiver, and their officers and agents.

By order of the Railroad Commission of Arkansas:

Little Rock, Ark., May 8th, 1907.

W. E. FLOYD, *Secretary.*

61 EXHIBIT "E."

Office of Railroad Commission of Arkansas.

Order No. 353-A.

(Nunc Pro Tunc.)

CO-OPERATIVE COAL COMPANY, SCHMIDT-BLAKELY COAL COMPANY, Big Four Coal Company, W. H. West (3 Mines), The Home Coal Company, Coal Hill Coal Company, Complainants,

Against

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Defendants.

October 30th, 1907.

NOTE.—The proceedings herein described were had upon the 30th day of October, 1907, at the office of the Commission, but the order issued at that time (353-A) contained some errors in regard to the name of the County Courts and the names of the Prosecuting Attorneys to whom the same should be certified out, and the order was never put upon record nor certified out. It is on this date, (the date at the end of the order) ordered by the Commission that a Nunc Pro Tunc be, and the same is hereby issued as follows, to-wit:

Now, on this day the complaints of the complainants herein named against the said St. Louis, Iron Mountain and Southern Railway Company, charging a failure on the part of said Company as a common carrier of freight to furnish shipping facilities to said complainants for the transportation of the products of their coal mines located on the line of said Railroad Company at or near Denning in Franklin County, Arkansas, and Coal Hill in Johnson County, Arkansas, from the 10th day of September, 1907,
62 until the 30th day thereof, and alleging a discrimination on the part of the said Railway Company in furnishing shipping facilities to the Western Coal and Mining Company, located at Denning, in Franklin County, Arkansas, and Jenny Lind in Sebastian County, Arkansas, and in failing and refusing to furnish said complainants with shipping facilities during said period, and praying an order of this Commission requiring said defendant company to furnish complainants with sufficient facilities for the transportation of products of their said mines, and also praying for an order assessing the penalty against said defendant company for

such failure, as provided by law for discrimination alleged in said complaint, coming on to be heard before the Commission, both the complainants and the defendant railway company being present in person or by their attorneys and representatives, the same being submitted by them to the Commission for final decision upon the complaint of said complainants and the answer of said Railway Company, and the evidence hereto taken in support of said complaints, upon consideration thereof we find:

First. That the mines operated by the Western Coal and Mining Company located at Denning, in Franklin County, Arkansas, and at Jenny Lind, in Sebastian County, Arkansas, are principally owned and controlled by the defendant Railway Company.

Second. That the said defendant Railway Company on the date alleged in said complaint, to-wit: from September 10th, 1907, to September 30th, 1907, inclusive, failed and refused to furnish the said complainants or either of them, cars or facilities to transport the product of their said mines, notwithstanding demand had been made therefor by each of said complainants in the manner as by law provided.

Third. We find that said defendant Railway Company is guilty of an unlawful discrimination against each of said complainants in that the said Railway Company during a period between the 10th day of September, 1907, and the 30th day thereof, furnished
63 to their own mines operated by the Western Coal and Mining Company, at the places above stated, a sufficient and adequate car supply for the prompt transportation of all coal mined at their mines aforesaid, and that during said period said Railway Company failed and refused to furnish complainants with necessary facilities for shipping the products of their mines.

Fourth. We find from the records of the defendant Railway Company kept at its office in the towns of Denning and Jenny Lind in the counties aforesaid, that a part of all coal mined and shipped by the said Western Coal and Mining Company between the 10th and 30th days of September, 1907, was shipped as a commercial commodity placed upon the market and sold as such, and that this action on the part of the defendant company was in violation of the law and the rights of complainants.

Fifth. That the coal mined and shipped from the mines as aforesaid by the defendant company, as Company coal, was not shipped for immediate consumption but was stocked by said Company along its lines of railway at various points in the State of Arkansas.

Sixth. That the failure to furnish cars is one offense, and that the discrimination is a separate offense and that each day's failure at each mine was a separate offense, both as to discrimination on and as to failure to furnish cars.

The premises considered: It is adjudged by the Commission that the St. Louis, Iron Mountain and Southern Railway Company hath incurred the penalties denounced by the 18th Section of the Act of March 11th, 1899, (Section 6813 Kirby's Digest) of the State of Arkansas creating a Railroad Commission and defining its powers and duties by unlawfully disregarding and failing to do and dis-

charge its duties to shippers in disregard of the duties imposed upon it by Section 11th of said Act of March 11th, 1899, (Section 6804 Kirby's Digest) and the rules of this Commission requiring railroads to furnish cars on demand of shippers and prohibiting dis-
64 crimination by railroads in the furnishing of cars or otherwise, and governing the transportation of property as outlined in Rule 32 of the Commission, effective September 23rd, 1899, by unlawfully refusing or failing to furnish cars and unjustly discriminating against each of said complainants daily from September 10th, 1907, to September 30th, 1907, inclusive.

It is further ordered by the Commission that the State of Arkansas shall have and receive of and from the St. Louis, Iron Mountain and Southern Railway Company its penalty for disregarding the duties imposed upon it by law and the rules of the Commission of this State aforesaid, and to that end it is ordered by the Commission that its Secretary make out a true and perfect transcript of this order and that the same be certified under the seal of this office and forthwith forwarded to the Honorable H. M. Jacoway, Prosecuting Attorney of the Fifth Judicial District of the State of Arkansas.

It is further ordered that the said Prosecuting Attorney in instituting proceedings in conformity with aforesaid order, do not proceed under any provision or provisions of the Act of the General Assembly of the State of Arkansas, entitled: "An act to regulate freight transportation by Railroad Companies doing business in the State of Arkansas." Approved April 19th, 1907, or any rules or orders made by the Railroad Commission of Arkansas by virtue of said Act, this Commission having been enjoined by the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas from enforcing the provisions of said Act, but that he proceed solely under the provisions of law and the rule of the Commission as outlined in the second preceeding paragraph.

It is further ordered that within fifteen days after the receipt of said transcript that the said prosecuting attorneys institute suits in the name of the State of Arkansas against the said St. Louis, Iron Mountain and Southern Railway Company for its
65 violation of the laws of this State and the rules of the Commission aforesaid in the Johnson County Circuit Court to recover the penalties for its dereliction of duty aforesaid as in such case made and provided by law.

66 EXHIBIT "F".

Office of Railroad Commission of Arkansas.

Order No. 353-*A*.

(Nunc Pro Tunc.)

HILL HACKNEY AND COMPANY, FRANKLIN COAL COMPANY, BLACK DIAMOND COAL COMPANY, Complainants,
against
ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Defendants.

October 30th, 1907.

NOTE.—The proceedings herein described were had upon the 30th day of October, 1907, at the office of the Commission, but the order issued at that time (353-A) contained some errors in regard to the name of the County Courts and the names of the Prosecuting Attorneys to whom the same should be certified out, and the order was never put upon record nor certified out. It is on this date, (the date at the end of the order) ordered by the Commission that a Nunc Pro Tunc be, and the same is hereby issued as follows, to-wit:

Now, on this day the complaints of the complainants herein named against the said St. Louis, Iron Mountain and Southern Railway Company, charging a failure on the part of said Company as a common carrier of freight to furnish shipping facilities to said complainants for the transportation of the products of their coal mines located on the line of said Railroad Company at or near Denning in Franklin County, Arkansas, and Coal Hill in Johnson County, Arkansas, from the 10th day of September, 1907, until the 30th
67 day thereof, and alleging a discrimination on the part of the said Railway Company in furnishing shipping faciliies to the Western Coal and Mining Company, located at Denning, in Franklin County, Arkansas, and Jenny Lind in Sebastian County, Arkansas, and in failing and refusing to furnish said complainants with shipping facilities during said period, and praying an order of this Commission requiring said defendant company to furnish complainants with sufficient facilities for the transportation of products of their said mines, and also praying for an order assessing the penalty against said defendant company for such failure, as provided by law for discrimination alleged in said complaint, coming on to be heard before the Commission, both the complainants and the defendant railway company being present in person or by their attorneys and representatives, the same being submitted by them to the Commission for final decision upon the complaint of said complainants and the answer of said Railway Company, and the evidence hereto taken in support of said complaints, upon consideration thereof we find:

First. That the mines operated by the Western Coal and Mining Company located at Denning, in Franklin County, Arkansas,

and at Jenny Lind, in Sebastian County, Arkansas, are principally owned and controlled by the defendant Railway Company.

Second. That the said defendant Railway Company on the date alleged in said complaint, to-wit: from September 10th, 1907, to September 30th, 1907, inclusive, failed and refused to furnish the said complainants or either of them, cars or facilities to transport the product of their said mines, notwithstanding demand had been made therefor by each of said complainants in the manner as by law provided.

Third. We find that said defendant Railway Company is guilty of an unlawful discrimination against each of said complainants in that the said Railway Company during a period between the 10th day of September, 1907, and the 30th day thereof, furnished
68 to their own mines operated by the Western Coal and Mining Company, at the places above stated, a sufficient and adequate car supply for the prompt transportation of all coal mined at their mines aforesaid, and that during said period said Railway Company failed and refused to furnish complainants with necessary facilities for shipping the products of their mines.

Fourth. We find from the records of the defendant Railway Company kept at its office in the towns of Denning and Jenny Lind in the counties aforesaid, that a part of all coal mined and shipped by the said Western Coal and Mining Company between the 10th and 30th days of September, 1907, was shipped as a commercial commodity placed upon the market and sold as such, and that this action on the part of the defendant company was in violation of the law and the rights of complainants.

Fifth. That the coal mined and shipped from the mines as aforesaid by the defendant company, as Company coal, was not shipped for immediate consumption but was stocked by said Company along its lines of railway at various points in the State of Arkansas.

Sixth. That the failure to furnish cars is one offense, and that the discrimination is a separate offense and that each day's failure at each mine was a separate offense, both as to discrimination on and as to failure to furnish cars.

The premises considered: It is adjudged by the Commission that the St. Louis, Iron Mountain and Southern Railway Company hath incurred the penalties denounced by the 18th Section of the Act of March 11th, 1899, (Section 6813 Kirby's Digest) of the State of Arkansas creating a Railroad Commission and defining its powers and duties by unlawfully disregarding and failing to do and discharge its duties to shippers in disregard of the duties imposed upon it by Section 11th of said Act of March 11th, 1899, (Section 6804 Kirby's Digest) and the rules of this Commission requiring railroads to furnish cars on demand of shippers and prohibiting dis-
69 crimination by railroad in the furnishing of cars or otherwise, and governing the transportation of property as outlined in Rule 32 of the Commission, effective September 23rd, 1899, by unlawfully refusing or failing to furnish cars and unjustly discriminating against each of said complainants daily from September 10th, 1907, to September 30th, 1907, inclusive.

It is further ordered by the Commission that the State of Arkansas shall have and receive of and from the St. Louis, Iron Mountain and Southern Railway Company its penalty for disregarding the duties imposed upon it by law and the rules of the Commission of this State aforesaid, and to that end it is ordered by the Commission that its Secretary make out a true and perfect transcript of this order and that the same be certified under the seal of this office and forthwith forwarded to the Honorable James Cochran as Prosecuting Attorney of the Fifteenth Judicial District of the State of Arkansas.

It is further ordered that the said Prosecuting Attorney in instituting proceedings in conformity with aforesaid order, do not proceed under any provision or provisions of the Act of the General Assembly of the State of Arkansas, entitled "An Act to regulate freight transportation by Railroad Companies doing business in the State of Arkansas". Approved April 19th, 1907, or any rules or orders made by the Railroad Commission of Arkansas by virtue of said Act, this Commission having been enjoined by the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas from enforcing the provisions of said Act, but that he proceed solely under the provisions of law and the rule of the Commission, as outlined in the second preceeding paragraph.

It is further ordered that within fifteen days after the receipt of said transcript that the said prosecuting attorneys institute suits in the name of the State of Arkansas against the said St. Louis, Iron Mountain and Southern Railway Company for its violation
70 of the law of this State and the rules of the Commission aforesaid in the Franklin County Circuit Court to recover the penalties for its dereliction of duty aforesaid as in such case made and provided by law.

Endorsed: Filed and writs issued November 9th 1907. W. P. Feild, Clerk.

71 And on the same day the following proceedings were had, to-wit:

1624.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY
vs.
JOHN E. HAMPTON et al., &c.

Upon presentation of the Bill of Complaint in this cause, verified by oath, it is ordered by the Court that the defendants herein appear in this Court on the sixth day of December, 1907, at ten o'clock A. M. and then and there show cause why a temporary injunction, as prayed in the Bill, should not be granted; and it is further ordered that in the meantime, and until the further order of the Court, the defendants, John E. Hampton, Robert P. Allen and John W. Crockett, as Railroad Commissioners of the State of Arkansas, their agents, attorneys and all other persons acting under their direction,

be restrained from instituting, prosecuting, aiding, abetting, directing or causing to be instituted or prosecuted any and all suits of whatsoever nature by which it may be sought to enforce and recover any fines and penalties for violation of the provisions of the Act of the General Assembly of the State of Arkansas, entitled "An Act to Regulate Freight Transportation by Railroad Companies doing Business in the State of Arkansas," approved April 19th, 1907, or any rules or orders made as such Railroad Commissioners by virtue of said Act, until the further order of the Court.

And it is further ordered that a duly certified copy of this order be served on each of the defendants herein, and also upon the Attorney General of the State of Arkansas, or, in his absence, upon the Assistant Attorney General.

(Signed) JACOB TRIEBER, *Judge.*

And on December 2nd, 1907, the following proceedings were had, to-wit:

72 1624.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY
vs.
JOHN E. HAMPTON et al., &c.

Comes the complainant by Oscar L. Miles, Mehaffy, Williams and Armistead, Esqs., its solicitors and come the defendants by W. F. Kirby, Morris M. Cohn and Rose, Hemingway, Cantrell and Loughborough, Esqs., their solicitors, and by agreement of parties filed herein it is ordered that the hearing for a temporary injunction herein set down for December 6th next, be continued until December twentieth next.

And on December 14th, 1907, the following proceedings were had, to-wit:

1624.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY
vs.
JOHN E. HAMPTON et al., &c.

Comes the complainant by Oscar L. Miles, Mehaffy, Williams and Armistead, Esqs., its solicitors, and by leave of Court first had and obtained files herein its supplemental bill of complaint.

Which Supplemental Bill of Complaint is as follows:

In the United States Circuit Court for the Western Division of the Eastern District of Arkansas.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY
vs.
JOHN E. HAMPTON, ROBERT P. ALLEN, and JOHN W. CROCKETT, as Railroad Commissioners of the State of Arkansas, and
73 Henderson M. Jacoway, as Prosecuting Attorney of the Fifth Judicial District of the State of Arkansas, and James Cochran, as Prosecuting Attorney of the Fifteenth Judicial District of the State of Arkansas.

Supplemental Bill of Complaint.

To the Honorable the Judges of the Circuit Court of the United States for the Eastern District of Arkansas, Western Division:

Now comes the above named complainant, St. Louis, Iron Mountain and Southern Railway Company, a consolidated corporation duly organized and existing under and by virtue of the laws of the States of Arkansas and Missouri, and brings this Bill of Complaint against John E. Hampton, Robert P. Allen, John W. Crockett, citizens and residents of the State of Arkansas, constituting the Railroad Commission of Arkansas, organized under an Act of the Legislature of said State, approved March 11th, 1899, and Henderson M. Jacoway, the duly elected and qualified Prosecuting Attorney of the Fifth Judicial District of the State of Arkansas, and James Cochran, the duly elected and qualified Prosecuting Attorney of the Fifteenth Judicial District of the State of Arkansas, and thereupon humbly complaining, your orator, St. Louis, Iron Mountain and Southern Railway Company, shows unto your Honors as follows:

I.

Your orator is a railroad corporation duly organized and existing under and by virtue of the laws of the States of Arkansas and Missouri.

II.

The defendants, John E. Hampton, Robert P. Allen and John W. Crockett, are citizens and residents of the State of Arkansas, and constitute the Railroad Commission of Arkansas, having been duly elected and qualified in pursuance of the provisions of the
74 Railroad Commission Act hereinafter more particularly mentioned; that said Commissioners derive any and all power, authority and character as such Commission, and in respect to the matters hereinafter complained of, from and under an Act of the Legislature of the State of Arkansas, approved March 11th, 1899, and an Act supplemental thereto, approved April 15th, 1899, and from the Act of the Legislature of the State of Arkansas, approved April 19th, 1907, the first and original of said acts being entitled, "An Act to provide for the regulation of railroad freight and passen-

ger tariffs in this State, to prevent unjust discriminations and extortion in the rate charged for the transportation of passengers and freight, and to prohibit railroad companies, corporations, and lessees in this State from charging other than just and reasonable rates, and to punish the same, and to prescribe a mode of procedure and rules of evidence in relation thereto; and to appoint Commissioners, and to prescribe rules for their government, and define their powers and duties in relation to the same," and the supplemental Act above referred to, being entitled, "An Act supplemental to an Act to provide for the regulation of railroad freight and passenger tariffs in this State, approved the 11th day of March, 1899"; and the third of said Acts being entitled "An Act to regulate freight transportation by railroad companies doing business in the State of Arkansas." A true copy of said original Act marked "Exhibit A"; a true copy of said supplemental Act marked "Exhibit B," and a true copy of said third mentioned Act, marked "Exhibit C" are attached hereto and filed as a part hereof.

That said original Act fixed and established the office of said Railroad Commission of Arkansas at the City of Little Rock in the County of Pulaski, within the Western Division of the Eastern District of Arkansas, and said Commission and said John E. Hampton, Robert P. Allen and John W. Crockett, as said Commission-
75 ers, are residents and inhabitants of said Pulaski County, and of the aforesaid Eastern District of Arkansas, that defendant Henderson M. Jacoway is the duly elected and qualified prosecuting attorney within and for the Fifth Judicial District of the State of Arkansas, of which Judicial District the County of Johnson, in the State of Arkansas is a component part, and the said Henderson M. Jacoway is a resident and inhabitant of the City of Dardanelle, in the County of Yell in said Judicial District.

That the defendant James Cochran is the duly elected and qualified prosecuting attorney within and for the Fifteenth Judicial District of the State of Arkansas, of which Judicial District the County of Franklin in the State of Arkansas is a component part, and said James Cochran is a resident and inhabitant of the City of Paris in the County of Logan in said Judicial District of the State of Arkansas.

III.

Your orator owns and operates various lines of railroad in the State of Arkansas, and elsewhere, as follows, to-wit:

A main line of railroad extending from the City of St. Louis, in the State of Missouri, thence through said State of Missouri and State of Arkansas to the City of Texarkana, in the State of Arkansas, a distance of 490 miles; together with various branch lines of railroad as follows: From Bismark, in the State of Missouri, to Belmont, in the State of Missouri, a distance of about 120 miles; from Poplar Bluff, in the State of Missouri, to Bird Point, in the State of Missouri, a distance of about 70 miles; from Valley Junction, in the State of Illinois, to Thebes, in the State of Illinois, a distance of about 121 miles; from Knobel, in the State of Arkansas, to

Helena, in the State of Arkansas, a distance of about 140 miles; from Latour, in the State of Arkansas, to McGhee, in the State of Arkansas, a distance of about 81 miles; from Bald Knob, in the State of Arkansas, to Memphis, in the State of Tennessee, a
76 distance of about 92 miles; from Diaz, in the State of Arkansas, to Carthage, in the State of Missouri, a distance of about 268 miles; from Gurdon, in the State of Arkansas, to El Dorado, in the State of Arkansas, a distance of about 65 miles; from Little Rock, in the State of Arkansas, through the State of Arkansas and Indian Territory to Coffeyville, in the State of Kansas, a distance of about 322 miles; from Little Rock, in the State of Arkansas, to Alexandria, in the State of Louisiana, a distance of about 291 miles; from Hally, in the State of Arkansas, to Clayton Junction, in the State of Louisiana, a distance of about 140 miles; from Tripp Junction, in the State of Arkansas, to Warren in the State of Arkansas, a distance of about 49 miles, together with various other branches and extensions not herein specifically described, aggregating in all, 2,459.15 miles of railway; that your orator also has operating rights over various other lines of railroad, including bridges across the Mississippi River at Memphis, Tennessee, and Thebes, Illinois, for the purpose of making its line of railroad continuous as aforesaid; that your orator is now, and for a long time heretofore, has been engaged in the operation of its various lines of railroad as aforesaid in the State of Missouri, Illinois, Arkansas, Tennessee, Louisiana, Kansas and the Indian Territory in the transportation of freight traffic not only local to the State of Arkansas and said several States and the Indian Territory before mentioned, but also between points in the several States before mentioned, and between points on the Indian Territory and said several States, and between points on its line in said several States and Territory and all other States of the United States of America by systems of through rates through routes and traffic arrangements and that your orator is a common carrier subject to the Act of Congress of the United States of February 4th, 1887, entitled "An Act to Regulate Commerce" and the several amendments thereto; that your orator in the conduct of its business
77 as a common carrier as aforesaid uses many thousand freight cars daily and continuously of its own and under the interchange car service rules of all the other railroads of the United States of America.

IV.

Your orator further avers that the Act of the State of Arkansas heretofore referred to, approved April 19th, 1907, a copy of which is hereto attached marked "Exhibit C," by section 23 thereof invest the said Railroad Commission with the powers and imposes upon it the duty of formulating rules for the government of the railroads of the State of Arkansas in respect to the furnishing of cars to shippers, transportation and delivery of freight and other requirements.

Your orator further avers that in pursuance of said Section 23 of said Act of the Legislature of the State of Arkansas, the said Rail-

road Commission of Arkansas, did on the 19th day of June, 1907, make, publish and promulgate Order No. 346 of the said Railroad Commission, a copy of which is hereto attached marked "Exhibit D."

Your orator further avers that the Railroad Commission of Arkansas by its order 346 aforesaid, provides in Section 1 as follows:

"SECTION 1. When a shipper makes a written application to the station agent of a railroad company for a car or cars, to be loaded with any kind of freight embraced in the traiff of said company, stating in said application the character of the freight, and its final destination, the railroad company shall furnish same at the place of shipment within six days from 7 o'clock A. M. the day following such application.

Or, when the shipper making such application specifies a future day on which he desires to make a shipment, giving not less than six days' notice thereof, computing from 7 o'clock A. M. the day
78 following such application, the railroad company shall furnish said car or cars on the day specified in the application, said station agent shall give applicant a receipt for his application for car or cars, with date of filing said application; provided, that it shall be the duty of every railroad company in this State to exchange loaded and empty cars in the transportation of such freight for the purpose of facilitating its movement with every railroad with which it connects, forming any part of the route for the shipment of such freight over which it has or participates in joint rates for such shipments; and for each of such railroad companies forming such route or having or participating in such joint rates on demand of such connecting line to furnish to it, within reasonable time after such loaded cars are delivered, as many empty cars suitable for carrying such freight as may have been delivered to it loaded by such connecting carrier for the purpose of transportation over its lines or for delivery to any point on its line; and upon demand of the owner thereof, it shall be the duty of every such railroad company, receiving the cars of another to return the same within a reasonable time after demand therefor; and within the time and according to the rules and regulations prescribed by the Railroad Commission of this State, provided, this rule shall not apply to railroads under two miles in length and to railroads that are not public carriers.

For failure to comply with this section the railroad company so offending shall forfeit and pay to the shipper applying the sum of five dollars per car per day, or fraction of a day's delay, after expiration of free time, upon demand in writing, made within thirty days thereafter by the shipper, provided, failure on the part of the shipper to make demand upon the railroad company shall not release the railroad company from liability to the shipper from said forfeiture or demurrage charges."

79 Your orator further avers that the Railroad Commission of Arkansas, by its order 346 aforesaid, in Section 2 provides as follows:

"SECTION 2. When freight in car loads or less is tendered to a railroad company and correct shipping instructions given, the railroad agent must immediately receive the same for shipment and issue

bills of lading therefor, and whenever such shipments have been so received by any railroad company, they must be carried forward at the rate of not less than fifty (50) miles per day of twenty-four hours, computing from seven o'clock A. M. the day following receipt of shipment and for failure to receive and transport such shipments within the time prescribed, the railroad company so offending shall forfiet and pay to the shipper the sum of five dollars per car per day, or fraction thereof, on all car load freight, and one cent per hundred pounds per day, or fraction thereof, on freight in less than car loads, with a minimum charge of five cents for any one package, upon demand in writing by the shipper and other party whose interest is affected by such delay; provided, that in computing the time of freight in transit there shall be allowed twenty-four hours' at each point where transferring from one railroad company to another or rehandling of freight is involved, and in all computations of time between shipper and carrier, Sundays and legal holidays are to be excluded; and in the transportation of cattle, sheep, swine and other animals, the carrier shall be governed by the provisions of the Federal Statutes, in watering, feeding and rest of said animals, and such delay shall be counted as free time. The period during which the movement of freight is suspended on account of accident, or any cause not within the power of the railroad company to prevent, shall be added to the free time allowed in this section, and counted as additional free time."

80 Your orator further avers that the Railroad Commission of Arkansas by its order 346 aforesaid, in section four, provides as follows:

"SECTION 4. Railroad companies shall deliver freight at their depots or warehouses, or, in case of shipments for track delivery, shall place loaded cars at an accessible place for unloading within twenty-four hours after arrival, computing from 7 o'clock A. M. the day following arrival of same; except that car load shipments for track delivery at local stations having not more than one team track shall be placed at an accessible point for unloading by the conductor of the train on which the car arrives. The shipper or consignee shall be paid five dollars per car per day for each day, or fraction of a day, such delelivery is delayed."

Your orator further avers that the Railroad Commission of Arkansas, by its order 346 aforesaid, in Section 6, provides as follows:

"SECTION 6. A shipper, on whose order a car or cars have been placed for loading, shall be allowed forty-eight hours for the loading of such car or cars, computing time from 7 o'clock A. M. the day after such car or cars have been placed subject to the order of the shipper, and thereafter a demurrage charge of not more than five dollars per car per day, or fraction of a day, may be assessed and collected on all such cars as have not been tendered to the railroad company with shipping instructions within said forty-eight hours; provided, however, that should the shipper fail to begin loading within forty-eight hours after the expiration of free time, the railroad company shall consider the car or cars released, and may assess and collect ten dollars on each car, covering the demurrage then due; pro-

vided, that such delay be not caused by unavoidable accident or strike, and said cars be at once released. The railroad company shall not be required to furnish cars for future shipments to parties
81 in default as to the payment of demurrage charges herein last provided for until such demurrage charges have been paid. If, after placing the car or cars required by this rule the railroad company shall, during or after free time, temporarily remove all or any of them, or in any way prevent, obstruct or delay the loading of same, the shipper shall not be chargeable with the delay caused thereby.

When by reason of delay or irregularity on the part of the railroad company in filling orders, cars are bunched in excess of the ability of the shipper to load as indicated in his application, the shipper shall be allowed separate and distinct periods of free time within which to load the car or cars specified in each separate application."

Your orator further avers that the Railroad Commission of Arkansas, by its order 346, in Section 7, provides as follows:

"SECTION 7. A car or cars detained or held at point of shipment for want of proper shipping instructions, or by reason of imperfect or excessive loading, where loading is done by shipper, shall be subject to a demurrage charge of five dollars per car per day, or fraction of a day, said car or cars are so detained or held. In case of imperfect or excessive loading, the shipper thereof shall be notified thereof—as practicable after said car or cars have been received from him in which case car service charges shall begin at the time of notification, provided no demurrage charge shall be collected by the railroad company after said car has been removed from point of shipment as provided in this rule."

Your orator further avers that the Railroad Commission of Arkansas, by its order 346 aforesaid, in Section 17 provides as follows:

"SECTION 17. Every person, company or corporation operating any railroad in this State which connects with any other rail-
82 road in this State, and which forms a part of a continuous line of railway communication to any point within this State, such companies or corporations, respectively, shall afford all due and reasonable facilities for receiving and forwarding by one of such railroads, all the traffic arising by the other, and shall promptly forward the same at through rates, without giving any undue preference or advantage to or in favor of any particular person or company, or any particular description of traffic in any respect whatever, but prefernece shall be given to live stock and perishable freight; said connecting lines shall as fully comply with the provisions of this rule as if they were the original receivers of said freight or traffic to be shipped or transported over their own lines, and said connecting railroads, that receive a car or cars from a connecting railroad in this State for transportation wholly in this State, shall return said car or cars, or cars of like character, on demand, in a reasonable time after such car or cars are delivered to consignee.

Interstate railroads shall furnish cars on application for interstate shipments the same in all respects as other cars are to be furnished by interstate railroads under the provisions of this rule."

V.

Your orator further avers that the aforesaid Railroad Commission on the — day of October, 1907, on the complaints of Hill Hackney and Company, the Franklin Coal Company, the Black Diamond Coal Company, the Co-operative Coal Company, W. H. West, the Home Coal Company, and Coal Hill Coal Company, issued its notice to the St. Louis, Iron Mountain and Southern Railway Company, your orator herein, to appear before said Railroad Commission of Arkansas, and show cause, if any it could, why the penalties provided by the Acts of the Legislature of the State of Arkansas, hereinbefore set out, should not be denounced against it for the violation of the aforesaid Acts of the Legislature of the State of Arkansas, and the aforesaid rule and order of the Railroad Commission of Arkansas, for the alleged failure to furnish cars and shipping facilities to the aforenamed complainants, and for the alleged discrimination against the aforenamed complainants and in favor of the Western Coal and Mining Company.

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That your orator, St. Louis, Iron Mountain and Southern Railway Company, in pursuance of the aforesaid notice, made appearance before said Railroad Commission of Arkansas on the — day of October, 1907, and endeavored to show to said Railroad Commission of Arkansas that it had in no sense been guilty of the acts, omissions or failures charged against it by the aforesaid complainants, that after the introduction of much testimony before said Commission on the behalf of the aforesaid complainants and your orator herein, the Railroad Commission of Arkansas did make and enter findings and orders, copies of which findings and orders are hereto attached marked "Exhibit E" and "Exhibit F" respectively; that the said Railroad Commission of Arkansas either has already transmitted or is about to transmit said orders and findings to the Honorable Henderson M. Jacoway, Prosecuting Attorney aforesaid, and to the Honorable James Cochran, Prosecuting Attorney aforesaid, and has directed or is about to direct them to institute and prosecute suits against your orator to recover the penalties provided for in the aforesaid Act or Acts of the Legislature of the State of Arkansas; that under said Acts of said Legislature, and according to the aforesaid findings and orders of the Railroad Commission of Arkansas it will become and be the duty of said Prosecuting Attorneys to institute a large number, to-wit, three hundred and thirty suits against your orator for the purpose of recovering the penalties denounced by said Railroad Commission against your orator, that said penalties under the aforesaid Acts of the Legislature of the State of Arkansas and the orders and rules and finding of the Railroad Commission of Arkansas hereinbefore set out so denounced will aggregate the maximum sum of nine hundred and ninety thousand dollars and not less than the minimum sum of one hundred and sixty-five thousand dollars.

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VI.

Your orator avers that the aforesaid Acts of the Legislature of the State of Arkansas, and the rules and regulations of the Railroad

Commission of Arkansas promulgated in pursuance thereof, are repugnant to and in violation of Section 8 of Article 1 of the Constitution of the United States, which provides that the Congress shall have power to regulate commerce among the several states and with the Indian tribes. And your orator further avers and charges that said Acts of the Legislature of the State of Arkansas, and the action taken thereunder, by the defendants, Railroad Commissioners of the State of Arkansas, and threatened to be taken by the Prosecuting Attorneys aforesaid, and the suits for penalties as denounced against your orator by the said defendant Railroad Commissioners and Prosecuting Attorneys aforesaid, involve a control or attempt to control commerce between the States, and are illegal and void and violative of said provision of the Constitution of the United States above specifically referred to.

Your orator further complains and charges that the said Act of the Legislature of Arkansas, approved April 19th, 1907, heretofore attached and marked "Exhibit C," makes no provision for any exception to the rule which requires the furnishing of cars to shippers upon short notice as therein specified; that said Act does not take into accounts the periods when traffic may be congested or delays to traffic occasioned by washouts, unavoidable accidents or otherwise on the line of your orator's railroad. But said Act peremptorily requires, without regard to circumstances or conditions, and although your orator may be guiltless of any fault, wrong or negligence in the premises, and although it may be impossible for your orator
85 by the exercise of the utmost diligence in the proper management and operation of its railroad and traffic to furnish cars, nevertheless that such cars shall be furnished upon three or six days' notice as the case may be, or otherwise your orator will be subjected to the payment of the unjust, unreasonable and excessive penalties as by said Act of the legislature provided. Your orator avers that it is not possible in the exercise of the utmost care and diligence with respect to the operation of your orator's lines of railroad to prevent conditions from arising which will temporarily delay its equipment on its lines, and yet said Act of the Legislature and said order of the Railroad Commission of Arkansas made in pursuance thereof, make no provision for any defense, justification or excuse to be made by your orator under such conditions, but said Act of the Legislature and said order deprive your orator of any such defense, justification or excuse, and impose upon it the obligation to nevertheless pay the penalties hereinbefore mentioned; that therefore said Act and said order are grossly unreasonable, unjust and oppressive, and if enforced will be in violation of the commerce clause of the Constitution of the United States aforesaid, and the laws of the Congress of the United States passed in pursuance thereof.

VII.

Your orator further avers that the Acts of the Legislature of the State of Arkansas aforesaid, and the rules and regulations of the Railroad Commission of Arkansas taken in connection with the large number and excessive character of the penalties denounced

against your orator for the alleged violation of said Acts of the Legislature of the State of Arkansas, and for alleged violation of the rules and regulations of said Railroad Commission of Arkansas, deny to your orator the equal protection of the laws and are in violation of the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States which forbids any
86 State to deprive any person of life, liberty or property without due process of law, and to deny to any person within its jurisdiction the equal protection of the laws.

VIII.

Your orator further avers and charges that the aforesaid Acts of the Legislature of the State of Arkansas, and the rules and regulations of the Railroad Commission of the State of Arkansas, adopted in pursuance thereof, and the findings and orders of the said Railroad Commission hereinbefore referred to, and the action taken or threatened to be taken by the Prosecuting Attorneys of the State of Arkansas hereinbefore referred to, taken in connection with the excessive and extreme character of the penalties hereinbefore referred to, are in violation of Section 3 of the Act of Congress of the United States, approved February 4th, 1887, entitled "An Act to Regulate Commerce" providing as follows:

"SECTION 3. That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular description of traffic, in any respect whatsoever, or, to subject any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

In that your orator would be compelled under said Acts of the Legislature of the State of Arkansas, and the rules and regulations of the Railroad Commission of Arkansas, to assemble its cars and motive power in the coal districts of the State of Arkansas to the undue and unreasonable prejudice or disadvantage of other coal mining district- in adjacent States, and in the Indian Territory, and in this respect would have the effect to give an undue ad-
87 vantage or preference to persons, companies, firms and corporations engaged in the mining and shipping of coal in the State of Arkansas.

IX.

Your orator further avers and charges that its freight cars as hereinbefore required by the Railroad Commission of the State of Arkansas to be peremptorily furnished to various shippers of coal in the State of Arkansas upon the order of said shippers as provided for by said Acts of the Legislature of the State of Arkansas, and the rules and regulations of the Railroad Commission of Arkansas thereunder adopted, are instrumentalities equipped, prepared and held and used by your orator for the movement of interstate commerce, and as such are by the Act of Congress of the United States, en-

titled "An Act to Regulate Commerce" approved February 4th, 1887, and the amendments thereto, more especially the amendment approved June 29th, 1906, entitled "An Act to Amend an Act entitled 'An Act to Regulate Commerce,' approved February 4th, 1887, and all Acts Amendatory Thereof and to Enlarge the Powers of the Interstate Commerce Commission," exclusively under the control of the Interstate Commerce Commission of the United States, and the Acts of the Legislature of the State of Arkansas aforesaid, and the rules and regulations of the railroad Commission of Arkansas aforesaid, and the orders and findings of the Railroad Commission of the State of Arkansas aforesaid, are in direct conflict with the aforesaid Acts of Congress, and as such are void and of no effect, and any effort on the part of the aforesaid Railroad Commission of Arkansas or of the Prosecuting Attorneys of the aforesaid Judicial Districts of the State of Arkansas to enforce the findings and orders of the said Railroad Commission of Arkansas, and the aforesaid Acts of the said State will be an invasion of the powers of Congress, and of the exclusive jurisdiction of the Interstate Commerce Commission over and in respect to the cars and instrumentalities of interstate com-
88 merce aforesaid.

X.

Your orator charges that the penalties prescribed by the Acts of the Legislature of the State of Arkansas aforesaid, and denounced against your orator by the findings and orders of the Railroad Commission of Arkansas aforesaid, and which are sought — be enforced against your orator by the Prosecuting Attorneys aforesaid, are harsh, unjust, unreasonable, oppressive and excessive and were enacted by the Legislature of the State of Arkansas into the forms of law and regulations hereinbefore set out, as your orator verily believes, for the purpose of so affrighting and practically intimidating your orator and other corporations owning and operating lines of railroad within the State of Arkansas, as that they would be necessarily constrained, coerced and compelled to yield instant obedience to said Acts of the Legislature of Arkansas and orders and findings of the Railroad Commission of Arkansas in pursuance thereof, without question and without the fair, unburdened and free opportunity of questioning and determining the validity thereof by the due and orderly course of judicial proceedings.

Your orator further avers and charges that the Acts of the Legislature of the State of Arkansas and the rules and regulations of the Railroad Commission of Arkansas and the findings and orders of the said Railroad Commission of Arkansas hereinbefore set forth, by which the aforesaid harsh, unjust, unreasonable, oppressive and excessive fines and penalties have been denounced against your orator and are sought to be recovered, so burden any challenge thereof in the Court, that your orator will necessarily be constrained to submit rather than take the chances of the penalties sought to be imposed.

And your orator charges that the cases in which said fines may be recovered from your orator are so frequent and repeated and the cu-

mulative effect of such fines and penalties will be so enormous
89 in amount that your orator will be greatly burdened and embarrassed and possibly financially ruined if it should fail or refuse to obey the requirements of said Acts of the Legislature of the State of Arkansas and the findings and orders of the Railroad Commission of Arkansas, with a view to testing the validity of said Acts of the Legislature and said orders and findings of the Railroad Commission as aforesaid, and your orator avers that the penal provisions of said Acts of the Legislature of the State of Arkansas sought to be enforced by the Railroad Commission of Arkansas hereinbefore referred to, are such as to deprive your orator of its property without due process of law, and to deny to your orator the equal protection of the laws in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

XI.

Your orator further charges and alleges that it has at no time failed or refused to furnish to the shippers upon whose complaints the orders of the Railroad Commission of Arkansas, hereinbefore referred to, were made, such reasonable and adequate facilities for the shipment of coal as existing conditions made it possible so to do, and as its obligation to the public required. Your orator avers that during the months of April, May and June, 1907, in order to supply the coal necessary to enable it to move its trains and to comply with its duties as a common carrier, your orator found it advisable to store, and did store, at different points on its lines of road in the State of Arkansas, large quantities of coal; that the purpose of your orator in so storing this coal was to release its cars and motive power during the summer, fall and winter following when demands for the same by shippers were most urgent and continuous, and also to provide places where its coal would be most accessible to it as required in the daily operation of its trains. Your orator alleges that during the month of August, 1907, the coal which
your orator had thus stored, namely, at Baring Cross, Wynne,
90 McGehee and Texarkana in the State of Arkansas, during the period of unprecedented heat and d-outh, took fire and was wholly destroyed, and this fact made it necessary for your orator to continually use its cars from the month of August until late in October in the daily hauling of coal from the mines intended for its own use and without which it would have been impossible to operate its trains. Your orator alleges that under these conditions it was not always able to furnish all the cars that were required, and for which demands were made by shippers, but it did furnish all cars which under the conditions it was able to furnish and all cars which it could under the conditions be legally required to furnish to those needing the same. Your orator alleges and avers that at no time has it illegally discriminated in the furnishing of cars to the complainants before the Railroad Commission, as hereinbefore set out, or to other shippers along your orator's lines of road, but, on the contrary, it has at all times made a fair, just and reasonable distribution of its cars and motive power, having constantly in mind

the capacity of the several shippers to load such cars, and the ability of the company to move the same. Your orator further alleges that it has at all times exercised due diligence to provide necessary cars and m-tive power to enable it to comply with its obligations as a common carrier not only in the State of Arkansas, but in other States through which its lines extend; that your orator in the operation of its property, has necessarily at time- suffered delay in the movement of traffic, but such delay has occurred through unavoidable accidents, through the failure of consignees to unload cars of your orator placed upon spur- and switches and through the failure of foreign lines of railroad to return to your orator cars which your orator has been required to furnish to such foreign lines in connection with the movement of state and interstate traffic; your orator alleges and avers that these delays thus occasioned have at times somewhat affected its ability to
91 promptly furnish cars to all shippers demanding the same, but such conditions have only temporarily prevailed and in all cases your orator has substantially complied with all of its obligations in the premises.

XII.

Your orator further avers and charges that the Railroad Commission of the State of Arkansas acting under the aforesaid Acts of the Legislature of the State of Arkansas and the rules and regulations of said Railroad Commission thereunder adopted, is daily assuming to act under the aforesaid authority of the Legislature of the State of Arkansas, and is constantly attempting to impose upon your orator the burden to furnish cars to shippers in the State of Arkansas for the movement of freight of all kinds over its various lines of railroad in the State of Arkansas and elsewhere as hereinbefore set out upon the peremptory demand and order of said shippers and of the Railroad Commission of the State of Arkansas, and that when your orator is endeavoring to perform its obligations and duties as a common carrier engaged in interstate commerce fails or refuses to furnish said cars to said shippers upon said requests and orders, the Railroad Commission of the State of Arkansas will make further and additional findings adverse to your orator, and will, unless restrained by your Honors from so doing, direct the various Prosecuting Attorneys of the State of Arkansas, and other persons, to institute divers suits in the various counties in the State of Arkansas to recover large sums of money as penalties, which said Commission will find your orator to have incurred, and which penalties it, the said Railroad Commission of Arkansas will denounce against your orator, and thus a multitude of suits and prosecutions will be instituted against your orator in the very many counties of the State of Arkansas through which the lines of your orator's railroad run, and your orator will be compelled to appear in each of said counties and make answer to a great
92 multiplicity of suits in which the Prosecuting Attorneys of the State of Arkansas and other persons acting under the direction of the Railroad Commission of Arkansas will seek to recover judgments against your orator for the harsh, unjust, unusual, oppress-

ive and *and* excessive penalties hereinbefore set out; and your orator avers that it will be compelled to employ a vast array of legal counsel and to spend very large sums of money in an effort to vindicate its rights and to challenge the validity of the aforesaid Acts of the Legislature of the State of Arkansas, and the aforesaid orders and findings of the Railroad Commission of Arkansas, unless your Honors shall restrain and enjoin the Railroad Commission of Arkansas, and the aforesaid Prosecuting Attorneys of said State and all other persons acting under the direction of the Railroad Commission of Arkansas from further action under and in pursuance of said acts of the Legislature of the State of Arkansas and the findings and orders of the said Railroad Commission as hereinbefore set out.

XII*a*.

Your orator would show that this case is a suit in equity of a civil nature and that the matter in dispute exceeds exclusive of interest and costs the sum of two thousand dollars, and that this case is a suit arising under the Constitution and laws of the United States, as follows, to-wit: Under Section 8 of Article 1 of said Constitution; under Section 1 of Article 14 of the Amendments to the Constitution of the United States; and under the Acts of Congress approved February 4th, 1887, and the Amendments thereto, and particularly under the Act of Congress approved June 29th, 1906, amendatory of said Act of Congress of February 4th, 1887, and of the rules and regulations of the Interstate Commerce Commission made under and in pursuance of said Acts of Congress.

XIII.

The premises considered and forasmuch as your orator is
93 remediless in the premises under the rules of the common law and can have adequate relief only in a court of equity where matters of this nature are properly cognizable and relievable, to the end therefore that the defendants herein named may answer the several matters and things hereinbefore set forth fully and particularly as if the same were herein again set forth and repeated, and they were thereto interrogated, your orator prays that the Railroad Commission of Arkansas and the said John E. Hampton, Robert P. Allen, and John W. Crockett, constituting the said Railroad Commission of Arkansas aforesaid. and the Honorable Henderson M. Jacoway, Prosecuting Attorney of the Fifth Judicial District of the State of Arkansas and the Honorable James Cochran, Prosecuting Attorney of the Fifteenth Judicial District of the State of Arkansas, and all other persons acting under the directions of the Railroad Commission of Arkansas, and each and every one of them, be temporarily restrained and enjoined from instituting, prosecuting, aiding, abetting, directing or causing to be instituted or prosecuted any and all suits of whatever nature by which it may be sought to enforce and recover the fines and penalties hereinbefore more particularly and definitely set out, and that the Railroad Commission aforesaid, and each and every one of them, be temporarily restrained and enjoined from taking any

further action of whatsoever nature against your orator under and in pursuance of the aforesaid Act of the Legislature of the State of Arkansas, or under any provision of said Act, and under and in pursuance of the rules and regulations of the Railroad Commission of Arkansas, hereinbefore set forth, adopted in pursuance of said Act of said Legislature.

And your orator prays that process shall straightway issue to each one and all of the aforesaid defendants, directing that they appear at an early day in this Honorable Court and make answer in the premises, but not under oath (answer under oath being hereby expressly waived) and upon full and final hearing that the Act
94 of the Legislature of the State of Arkansas, approved April 19th, 1907, and the orders and findings of the Railroad Commission of Arkansas against your orator adopted thereunder shall be adjudged and decreed to be null and void and of no effect by the decree of this Court, and that the Railroad Commission of Arkansas, and all other persons acting under said Railroad Commission, be forever enjoined from setting up any claim or making any findings or order against your orator under and by virtue of the aforesaid Act of the Legislature of the State of Arkansas, and the rules and regulations of the Railroad Commission of Arkansas thereunder adopted, and that your orator may have such other and further relief as in the premises may seem just and equitable, together with all its costs in this behalf expended.

OSCAR L. MILES,
T. M. MEHAFFY,
J. E. WILLIAMS,
Solicitors for Complainant.

ALEX G. COCHRAN,
Of Counsel.

Endorsed: Filed December 14th, 1907. W. P. Feild, Clerk.

Which Exhibit "A" to Supplemental Bill of Complaint is as follows:

(For Exhibit "A" to Supplemental Bill of Complaint see page 22 of this record.)

Which Exhibit "B" to Supplemental Bill of Complaint is as follows:

(For Exhibit "B" to Supplemental Bill of Complaint see page 37 of this record.)

Which Exhibit "C" to Supplemental Bill of Complaint is as follows:

(For Exhibit "C" to Supplemental Bill of Complaint see page 40 of this record.)

95 Which Exhibit "D" to Supplemental Bill of Complaint is as follows:

(For Exhibit "D" to Supplemental Bill of Complaint see page 51 of this record.)

Which Exhibit "E" to Supplemental Bill of Complaint is as follows:

(For Exhibit "E" to Supplemental Bill of Complaint see page 61 of this record.)

Which Exhibit "F" to Supplemental Bill of Complaint is as follows:

(For Exhibit "F" to Supplemental Bill of Complaint see page 66 of this record.)

And on December 20th, 1907, the following proceedings were had, to-wit:

1624.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY
vs.
JOHN E. HAMPTON et al., &c.

Comes the complainant by Oscar L. Miles and T. M. Mehaffy, Esqs., its solicitors and the defendant by W. F. Kirby, Attorney General, Morris M. Cohn and J. F. Sellers, Esqs., their solicitors, and said defendants by their said solicitors, file herein their general demurrer to the bill; and the hearing on the bill for a tem-
96 porary injunction having been continued until this date, and it being shown to the Court that the defendants are unable to proceed now, it is ordered that the same be continued until January 20th, 1908, and that the order of this Court of November 9th, 1907, as relates to the restraining order therein granted be continued and in full force and effect until the further order of the Court herein.

Which Demurrer of the defendants is as follows:

In the United States Circuit Court for the Western Division of the Eastern District of Arkansas.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY
vs.
JOHN E. HAMPTON, ROBERT P. ALLEN, and JOHN W. CROCKETT, as Railroad Commissioners of the State of Arkansas, and Henderson M. Jacoway, as Prosecuting Attorney of the Fifth Judicial District of the State of Arkansas, and James Cockran, as Prosecuting Attorney of the Fifteenth Judicial District of the State of Arkansas.

General Demurrer.

Come the defendants, John E. Hampton, Robert P. Allen and John W. Crockett, as Railroad Commissioners of the State of Arkansas, and Henderson M. Jacoway, Prosecuting Attorney of the Fifth Judicial District of Arkansas, and James Cochran, Prosecuting Attorney of the Fifteenth Judicial District of Arkansas, by their attorneys, J. F. Sellers, Morris M. Cohn and William F. Kirby, Attorney General of the State of Arkansas and demur to the complaint of the complainant, and for cause state, that the facts, matters and

things set out and alleged in the bill of complaint do not in
97 law constitute a cause of action and do not entitle the complainant to the relief sought.

Wherefore, and for divers other causes of demurrer appearing in said bill, these defendants demur thereto, and they pray a judgment of this Honorable Court whether they shall be compelled to make further or any answer to the said bill; and they humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

J. F. SELLERS.
MORRIS M. COHN.
W. F. KIRBY,
Attorney General.

I, William F. Kirby, Attorney General of the State of Arkansas, hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

W. F. KIRBY.

STATE OF ARKANSAS,
County of Pulaski:

J. E. Hampton makes solemn oath and says that he is a member of the Railroad Commission of Arkansas, and one of the defendants in the above entitled suit and that the foregoing demurrer is not interposed for delay.

J. E. HAMPTON.

Sworn to and subscribed before me this the 20th day of December, 1907.

W. P. FEILD, *Clerk.*

Endorsed: Filed December 20th, 1907. W. P. Feild, Clerk.

And on January 14th, 1908, the following proceedings were had, to-wit:

98 1624.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY
vs.
JOHN E. HAMPTON et al., &c.

Comes the complainant by Oscar L. Miles, Mehaffy, Williams and Armistead, Esqs., its solicitors, Henderson M. Jacoway and James Cochran, Prosecuting Attorneys and John E. Hampton, et al., by W. F. Kirby, Attorney General, and by agreement of parties it is ordered that the motion for temporary injunction heretofore set for January 20th, 1908, be continued until February 4th, 1908. And the Clerk of this Court will advise the parties hereto of the change herein made.

And on February 4th, 1908, the following proceedings were had, to-wit:

1624.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY
vs.
JOHN E. HAMPTON et al., &c.

Comes the complainant by Oscar L. Miles and Mehaffy, Williams and Armistead, Esqs., its solicitors and come the defendants by William F. Kirby, Attorney General and Morris M. Cohn, Esq., their solicitors, and by agreement of parties it is ordered that the motion for a temporary injunction heretofore set for February 4th, 1908, be continued until February 17th, 1908. And the Clerk of this Court will notify the parties hereto of the change herein made.

And on February 17th, 1908, the following proceedings were had, to-wit:

1624.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY
vs.
99 JOHN E. HAMPTON, ROBERT P. ALLEN, JOHN W. CROCKETT, as Railroad Commissioners of the State of Arkansas, Henderson M. Jocoway, Prosecuting Attorney of the Fifth Judicial District of the State of Arkansas, and James Cochran, Prosecuting Attorney of the Fifteenth Judicial District of the State of Arkansas.

On this day this cause came on for hearing on the demurrer to the Bill and amendment thereto, all parties appearing by their respective counsel, and the Court being well and sufficiently advised, doth overrule the demurrer interposed by the defendants, and to the action of the Court in overruling said demurrer the defendants at the time saved exceptions, and the defendants were given until the rule day in April 1908 Term of said Court to file answer in this cause.

And it appearing to the Court that complainant was entitled to the temporary injunction applied for in its original bill of complaint as amended, therefore, the application of complainant for such temporary injunction is granted, upon it giving on or before the 22nd day of February, 1908, a bond with good and sufficient sureties, to be approved by the Clerk of this Court in the penal sum of Twenty-five Thousand Dollars ($25,000.00) securing the defendants against all loss or damage which may result from the issue of said order, if it should be finally determined that the same was improperly issued, or that may be awarded to them by reason of the granting of this order.

Now therefore it is ordered that the said John E. Hampton, Robert P. Allen and John W. Crockett, as Railroad Commissioners

of the State of Arkansas, and Henderson M. Jacoway, as Prosecuting Attorney of the Fifth Judicial District of the State of Arkansas, and James Cochran, as Prosecuting Attorney of the Fifteenth Judicial District of the State of Arkansas, defendants herein, their
100 agents servants, and attorneys, and all persons acting by or under their authority, be and are hereby specially restrained and enjoined from instituting, prosecuting, aiding, abetting, directing, or causing to be instituted or prosecuted any and all suits of whatsoever nature by which it may be sought to enforce and recover any fines or penalties for violation of the provisions of the Act of the General Assembly of the State of Arkansas, entitled "An Act to Regulate Freight Transportation by Railroad Companies doing business in the State of Arkansas," approved April 19th, 1907, and any rules or orders made by such Railroad Commissioners by virtue of said Act until the further order of the Court and further service of this order is waived by the defendants.

(Signed) JACOB TRIEBER, *Judge.*

And on February 20th, 1908, the following proceedings were had, to-wit.

1624.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY
vs.
JOHN E. HAMPTON et al., &c.

Comes the complainant by its solicitors, and on its motion it is ordered by the Court, that the time for filing the bond for temporary injunction in this cause be and the same is hereby extended until the 28th day of February, 1908.

And on February 25th, 1908, the following proceedings were had to-wit:

1624.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY
vs.
JOHN E. HAMPTON et al., &c.

Comes the complainant by Mehaffy, Williams and Arm-
101 istead, Esqs., its solicitors and files herein its injunction bond in the sum of Twenty-five Thousand Dollars ($25,000.00) with W. M. Kavanaugh, Oscar Davis and W. B. Worthen as sureties, which bond is examined by the Clerk of this Court and approved as sufficient.

Which Bond is as follows:

In the United States Circuit Court for the Western Division of the Eastern District of Arkansas.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY
vs.
JOHN E. HAMPTON, ROBERT P. ALLEN AND JOHN W. CROCKET, as Railroad Commissioners of the State of Arkansas, Henderson M. Jacoway, as Prosecuting Attorney for the Fifth Judicial District of the State of Arkansas, and James Cochran, as Prosecuting Attorney for the Fifteenth Judicial District of the State of Arkansas.

Bond for Temporary Injunction.

Know all men by these presents: That we, St. Louis, Iron Mountain and Southern Railway Company, as principal and W. M. Kavanaugh, Oscar Davis and W. B. Worthen, of the District aforesaid, as sureties, parties of the first part, are held and firmly bound unto the said John E. Hampton, Robert P. Allen and John W. Crockett, as Railroad Commissioners of the State of Arkansas, and Henderson M. Jacoway, as Prosecuting Attorney of the Fifth Judicial District of Arkansas and James Cochran, as Prosecuting Attorney of the Fifteenth Judicial District of Arkansas, defendants in the above entitled action, parties of the second part, in the just and full sum of Twenty-five Thousand Dollars ($25,000.00), for the payment of which well and truly to be made, we hereby jointly and
102 severally bind ourselves and each of our successors, heirs, executors, administrators and assigns, firmly by these presents.

Sealed with our seals and dated this 21st day of February, in the year of our Lord One Thousand Nine Hundred and Eight, upon conditions as follows:

Whereas, the said St. Louis, Iron Mountain and Southern Railway Company has commenced its certain suit against the above named defendants in the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas, and therein prayed for an injunction against the defendants pending the trial of said suit; and

Whereas, the Honorable Jacob Trieber, Judge of the United States Circuit Court for the Western Division of the Eastern District of Arkansas, being well and sufficiently advised, has granted said temporary injunction upon conditions that the said complainant shall cause to be executed a good and sufficient bond to the defendants for the sum of Twenty-five Thousand Dollars ($25,000.00) to secure them against all costs and damages which may be awarded to them in case said order shall be finally determined to have been improperly granted;

Now, therefore, if the said St. Louis, Iron Mountain and Southern Railway Company shall well and truly pay the said defendants all costs and damages which may be awarded to them in case said Court shall finally determine that said injunction was improperly

granted, not exceeding the said sum of Twenty-five Thousand Dollars ($25,000.00), then this obligation to be null and void, otherwise to be in full force and virtue.

Witness our hands and seals this 21st day of February, 1908.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY,

[SEAL.] By C. F. CLARKE, *Vice President.*

OSCAR DAVIS.

W. B. WORTHEN.

W. M. KAVANAUGH.

Attest:

F. W. IRLAND,
Ass't Sec'y.

103 Approved as sufficient February 24th, 1908.

W. P. FEILD, *Clerk.*

Endorsed: Filed February 24th, 1908. W. P. Feild, Clerk.

And on March 5th, 1908, the following proceedings were had, to-wit:

1624.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY
vs.
JOHN E. HAMPTON et al., &c.

Come the defendants by W. F. Kirby, Attorney General and Morris M. Cohn, Esq., their solicitors and file herein their answer. Which Answer of the defendants is as follows:

In the United States Circuit Court for the Western Division of the Eastern District of Arkansas.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY
vs.
JOHN E. HAMPTON, ROBERT P. ALLEN and JOHN W. CROCKETT, as Railroad Commissioners of the State of Arkansas; Henderson M. Jacoway, as Prosecuting Attorney of the Fifth Judicial District of the State of Arkansas, and James Cochran, as Prosecuting Attorney for the Fifteenth Judicial District of the State of Arkansas.

Answer.

To the Honorable the Judges of the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas:

The defendants admit that the defendants, John E. Hampton, Robert P. Allen and John W. Crockett, constitute the Rail-
104 road Commission of the State of Arkansas under an Act of the Legislature of said State, approved March 11th, 1899; that

Henderson M. Jacoway and James Cochran are Prosecuting Attorneys of said State for the Districts mentioned in the complaint; that complainant is a railroad corporation organized under the laws of said State; but they do not know whether it was organized under the laws of the State of Missouri, or not; they admit that they derive their powers under the laws of said State of Arkansas, and aver that the said Railroad Commission of Arkansas, besides the Act of the Legislature mentioned in the complaint, derive power under Article 17, Section 10 of the Constitution of said State, and Amendment No. 4 thereto, which provide in terms for the establishment of such a Commission, to be vested with such authority, as the General Assembly of said State might deem necessary to carry into effect the powers so conferred. And that at the time the said complainant was incorporated under the laws of said State of Arkansas, it was provided by the then existing Constitution of said State, and the Act of the General Assembly of said State, under which said incorporation occurred, that the laws so provided might from time to time, be altered, amended or repealed.

That it is true that the members of said Commission are residents within the said Eastern District of Arkansas, and that the said Henderson M. Jacoway and James Cochran are residents within the localities set forth in the complaint.

That if it is true, as set forth in the complaint, that the complainant owns or controls and operates the lines of railroad mentioned in the third paragraph of the complaint, as to which defendants are not fully advised, it is true, likewise, that said laws, increased its lines of railroad so that within said State of Arkansas, at the date of the matters and things complained of by it, it owned or leased and operated and controlled lines of railroad in said State extending from the Mississippi River to Fort Smith, also from the north boundary line of said State to Texarkana, also from
105 Little Rock to the southern boundary line of said State r-nning in a southeasterly direction, and from Little Rock to boundary line of said State, and a large number of lines radiating from the said lines of railroad, or cities or towns thereon, in various directions, within said State of Arkansas; and that on said lines of railroad, within said State, are situated said City of Little Rock, and the Cities of Fort Smith, Pine Bluff, Hot Springs, Texarkana, Helena, Jonesboro, Camden, Hope, Paragould, Argenta, Morrilton, Van Buren, Newport, Batesville and the Towns of Fulton, Prescott, Gurdon, Arkadelphia, Nashville, Washington, Ozark, Russellville, Knobel, Corning, Walnut Ridge, Hoxie, and many other cities and towns; and that said complainant has been engaged in extending its lines of railroad, from time to time, to various cities and towns in said State, and maintains all of the same, by reason of the prerogative of eminent domain extended to it by said State. That, as such railroad corporation, it has been actively soliciting new business in said State, and has undertaken as a common carrier of persons and property within said State, to meet the increasing needs of persons and companies requiring transportation by rail to and from various places on its lines of railway to other places thereon or on other lines

of railroad until in the year 1907 its business of transportation within said State amounted to one million, three hundred and thirty-five thousand, eight hundred and thirty-four (1,335,834) tons, as against six hundred and ninety-eight thousand, nine hundred and fifty-nine (698,959) tons in the year 1900. That, if said corporation carries on interstate transportation, it carries on and holds itself out, and has ever held itself out and prepared to, and is required by law, to be prepared for transportation of goods and other property, between the various points upon its line in said State, except in case of extraordinary rush of business or contingencies it could not guard against.

106 The defendants admit that they have issued the order set forth in paragraph four of the complaint. They admit that the proceedings set forth in paragraph five of the said complaint were fully had, but deny the deductions made therefrom by complainant. They deny that the penalties under any rules made by said Railroad Commission, or said acts of the Legislature, will aggregate one hundred and sixty-five thousand dollars, or any fine in excess thereof. They deny that said Acts of said Legislature and action of said Commission and the said suits so threatened involve a control or attempt to control commerce between the States and are illegal and void, under any provision of the Constitution of the United States, as alleged in paragraph six of said complaint.

They aver that by the decisions of the Supreme Court of said State of Arkansas, the provisions of Acts similar to that of April 19th, 1907, have been so constructed as not to justify the imposition of fines and penalties in cases where the failure of the complainant to furnish cars is due to extraordinary rush of business, or to other contingencies which the company could not foresee or guard against, and the defendants deny that in the application of the provisions of the said Act of April 19th, 1907, or any other Act of the General Assembly of the State of Arkansas, they, or either of them, made any order, or countenanced any demand for cars, the failure to supply which was due to any extraordinary rush of business or other circumstances over which the said complainant had no control, or could not foresee; they deny that as applied by the said Supreme Court of Arkansas, or said Railroad Commission, the said Act of April 19th, 1907, or any other Act of said General Assembly, does not take account of the period when traffic may be congested or delays to traffic occasioned by washouts, and they deny that the said Act or Acts of the Legislature peremptorily require, without regard to circumstances or conditions, notwithstanding complainant may be guiltless of any fault, wrong or negligence in the premises, and although it may be impossible for complainant by the

107 exercise of the utmost diligence in the proper management and operation of its railroad and traffic to furnish cars, nevertheless, that such cars shall be furnished upon three or six days' notice as the case may be. And defendants say that it may be true that conditions may arise which complainant, in the exercise of the utmost care and diligence, could not have prevented, which might temporarily delay its equipment on its lines; but they say that nothing done

by them, or either of them, in the past, or in the future, justifies the complainant in setting up such a pretense in vindication of any pretended right which it possesses, as will appear from matters more fully set forth herein in a later paragraph of this answer.

The defendants deem it unnecessary to deny such parts of paragraphs seven and eight of the complaint, as set forth the Acts of Congress, or provisions of the Constitution of the United States, but they deny all deductions drawn by complainant therefrom, and all applications thereof by it, and they deny that the said Railroad Commission, by any order or rule or regulation has compelled or will compel the complainant, to assemble its cars and motive power in the coal districts of the State of Arkansas, to the undue or unreasonable prejudice or disadvantage of other coal mining districts in adjacent states, and in the Indian Territory, and that in this respect would have the effect to give an undue advantage or preference to persons, companies, firms or corporations engaged in the mining and shipping of coal in the State of Arkansas.

And they deny that its freight cars as hereinbefore required by said Railroad Commission were or are instrumentalities equipped, prepared, held and used by it for the advancement of interstate commerce, or that they are under the exclusive control of the Interstate Commerce Commission of the United States. And they deny the deduction, or conclusions of law drawn by complainant in paragraph nine of said complaint.

And by way of answer to paragraphs ten and eleven of said
108 complaint the defendants say, that for many years last past the said complainant has failed and refused to supply the shippers of Arkansas engaged in shipping property from one point in the State to other points in said State, with cars; that in this manner, it has seriously affected all lines of business in said State for many years last past; that the failure to furnish said cars was not due or owing to any emergency or conditions which said complainant, by the exercise of common law diligence could not and was not required to be prepared for; that said failure was not only caused by its own willful acts in utter disregard of the rights of shippers, but was the result of a policy pursued by said complainant, that had ruined and destroyed persons engaged in business in said State; that to partially meet the said evils legislation was required whereby the complainant could be required to furnish cars upon notice, the purpose and intent of such legislation being to make the common law obligations of complainant, as such common carrier by rail, more definite and certain rather than create penalties; that prior to and after the enactment of the said Act of April 19th, 1907, the complainant was interested and controlled the Western Coal and Mining Company, which was engaged in mining and selling coal, by carload and otherwise, in competition with other companies and individuals owning and operating coal mines in said State of Arkansas; that although the said complainant failed and refused to supply cars to said other coal operators, upon one pretext or another, prior to and after the passage of said Act of April 19th, 1907, it always appeared to have a sufficient number of cars to supply the need of said Western

Coal and Mining Company. That by every act and deed said complainant, as well after as before the passage of said Act, had shown its determination to prevent said competing coal operators from obtaining equal service to said Western Coal and Mining Company, and so cripple the competition thus proscribed. That evils which arose from the policy of said complainant, in relation to its
109 failure and refusal to furnish a proper supply of cars to said coal operators, in the same manner as cars were supplied by it to said Western Coal and Mining Company, finally induced the passage of the Act of April 19th, 1907 aforesaid, it being intended by said Act not to discriminate against cars to be used in interstate traffic, but it not being contemplated by said Act to improperly deal with or burden interstate commerce.

That the parties mentioned in paragraph five of the complaint comprised such rival and competing coal operators, who, by petition to said Railroad Commission, besought its aid to compel the said complainant to obey the reasonable requirements of the law in relation to such supply of cars on the -- day of October, 1907. That said Railroad Commission did not thereupon act in anywise arbitrarily, but gave timely notice to complainant of the filing of said petition, and gave all parties their proper opportunity to present all matters and things, that should be presented to said Commission upon the hearing thereof. That the said complainant for a long time endeavored to defeat a fair inquiry into the said matters, by refusing to produce its books relating to the supply of cars so made to said Western Coal and Mining Company; and that at the final hearing of said matters presented by said petition it appeared to said Commission that the said complainant, through its willful act, for the purpose of aiding and abetting the said Western Coal and Mining Company in furthering its business of selling coal for commercial purposes, and defeating the competition offered by the petitioners in said matter, had supplied said company with sufficient cars, but had failed and refused to supply such cars to said petitioners; that this was not produced by any destruction of supplies of coal, which said complainant had stored for its own use, nor by any contingency of an extraordinary nature which it could not have provided for; that the petitioners had been seriously damaged by said willful acts of said complainant; and that such acts re-
110 lated to and affected transportation wholly within said State of Arkansas. That conceiving that the action of said complainant was a willful violation of its duty as well under said Act of April 19th, 1907, as other Acts of the Legislature of Arkansas, and of its duty to shippers at common law, the said Commission made and entered the orders mentioned and set forth in the exhibits to the complaint; and that if said Commission has erred in its action, has been in any way arbitrary, the said complainant has adequate protection in its right to defend any prosecutions against it for penalties, under said orders, by setting up any matters which it is entitled to rely upon, under any provision of the Acts of Congress or Constitution of of the United States, and if the decisions of the State Courts shall be averse to it, it may then take an appeal to the Supreme Court

of the United States. That said Commission could not order such suits to be instituted in the Courts of the United States, for—such class of cases, said Courts have no jurisdiction. That could such suits have been instituted in this court, as they believe and aver, this Court would have imposed, and would impose the penalties sought to be imposed, by the proceedings to be instituted by the said prosecuting attorneys. That under the Act of April 19th, 1907, and other Acts of the General Assembly of said State of Arkansas, said Railroad Commission may ascertain what, if any, violation of the said Acts are chargeable against said railroad companies, engaged in interstate commerce in said State, but that the directions they may give are not conclusive upon said complainant; and that the hearing before said Commission is an extra opportunity to be heard to said complainant, before any suit for penalties shall be instituted by prosecuting attorneys. That after such suits have been instituted the complainant still has its day in Court to show, that it was guilty of no act or neglect which subjects it to any fine or penalty, and that it will not be debarred from so doing by anything done or not done by said Commission.

111 And defendants deny all of the allegations in said paragraphs ten and eleven, inconsistent with the matters and things above set forth, and all deductions and conclusions of fact and law therein.

And they deny that the said Railroad Commission will or can make any rules and regulations or orders which will unduly interfere with the duty of complainant under Acts of Congress or other laws relating to interstate commere, or under the laws of other States, and they aver that such matters are merely set up by complainant to cover up the real issues between it and the State of Arkansas, growing out of its failure and refusal to furnish cars for the transportation of coal within points in the State, for the purpose of willfully discriminating in favor of its own creation and property, to-wit: The Western Coal and Mining Company.

And defendants pray to be hence dismissed with their costs.

W. F. KIRBY, *Attorney General,*
MORRIS M. COHN,
Solicitors for Defendants.

Endorsed: Filed March 5th, 1908. W. P. Feild, Clerk.

Be it remembered, That at a Circuit Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the sixtx day of April, Anno Domini, one thousand nine hundred and eight, at the United States Court Room, in the City of Little Rock, the Honorable Jacob Trieber, United States District Judge presiding and holding said Court, the following proceedings were had, to-wit: on April 6th, 1908.

1624.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY
vs.
JOHN E. HAMPTON et al., &c.

Comes the complainant by Oscar L. Miles and T. M. Mehaffy, Esqs., its solicitors, and files herein its exceptions to the an-
112 swer of the defendants.

Which Exceptions to the Answer of the defendants are as follows:

In the United States Circuit Court for the Western Division of the Eastern District of Arkansas.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY
vs.
JOHN E. HAMPTON, ROBERT P. ALLEN, and JOHN W. CROCKETT, as Railroad Commissioners of the State of Arkansas; Henderson M. Jacoway, as Prosecuting Attorney of the Fifth Judicial District of the State of Arkansas; James Cochran, as Prosecuting Attorney of the Fifteenth Judicial District of the State of Arkansas.

Exceptions to Answer.

Exceptions Taken by the said Complainant to the Answer of the Defendants to Complainant's Bill of Complaint.

First. For that the defendants' answer herein fails to comply with the rules of this Court relative to equity practice, in that it is not of the form required by said rules, in that the subjects thereof are not divided into parts or paragraphs bearing appropriate numbers, reference or other designation, thereby rendering it impossible to determine specifically to what subject matter of the complaint the respective parts of said answer relate or undertake to traverse.

Second. For that defendants' answer fails to state or specify whether the same be the joint answer of all of the defendants, and by its terms it is impossible to determine whether the same be the joint answer of the defendants or the separate answer of some defendants in plaintiff's Bill of Complaint named.

113 Third. For that said defendants have not to the best of their several and respective knowledge, remembrance, information and belief made full, true, direct and perfect answer to the allegations of complainant's Bill of Complaint, that the defendants, John E. Hampton, Robert P. Allen and John W. Crockett, derive their powers as Railroad Commissioners of the State of Arkansas under the laws of that State, said answer evasively stating that all of the defendants derive their powers, without specification of what powers, under the laws of the State, or whether one or more of the defendants derive such power under said laws, as appears by the allegations specified in paragraph one of defendants' answer.

Fourth, Complainant excepts to paragraph two of page two, for that defendants or any of them, fail to answer to the best of their knowledge, remembrance, information and belief that the complainant is a railroad corporation and owns and operates lines of railroad as alleged in the Bill of Complaint herein, but that said paragraph two of said answer is irrelevant, immaterial and impertinent, evasive and insufficient, and the matters and things therein contained constitute no defense to complainant's said Bill of Complaint or any part thereof.

Fifth. Complainant excepts to the matter contained in the second paragraph of page three of defendants' answer, commencing with line thirteen of said page (which can be no other way conveniently designated or referred to because of the informality of said answer), for that said paragraph is imperfect, irrelevant, impertinent and immaterial, and the matters and things therein constitute no defense to any of the allegations in complainant's Bill of Complaint herein, and is insufficient in law.

Sixth. Complainant excepts to the last paragraph on page three commencing with the 25th line of said page and continuing to the end of said paragraph on page four of defendants' answer, for that said paragraph is imperfect, irrelevant and immaterial, and
114 the matters and things therein contained constitute no defense to any of the allegations in complainant's Bill of Complaint herein, and is insufficient, and is not made upon the best information, remembrance, knowledge and belief of the defendants or any of them.

Seventh. Complainant excepts to the last paragraph of page four and to and including the first paragraph of page five of defendant's answer, for that said paragraph of said answer is not full or explicit and is evasive and insufficient, and is irrelevant, impertinent and immaterial, and the matters and things therein contained constitute no defense to complainant's Bill of Complaint or any part thereof, and should be expunged from defendants' said answer.

Eighth. Complainant excepts to the last paragraph of page five and ending on page six of said defendants' said answer, for that same is imperfect, irrelevant, impertinent and immaterial, and the matters and things therein contained constitute no defense to any of the allegations in complainant's Bill of Complaint herein, and said paragraph of said answer is highly scandalous and should be expunged from said answer and from the records of this Honorable Court.

Ninth. Complainant excepts to the last paragraph on page six and all of page seven and to and including line nine on page eight of defendants' answer, for that the matters and things in the complainant's bill alleged, to which, if any part thereof, said part of said answer is addressed, is not made upon the defendants' best information, remembrance, knowledge and belief, but is a sham, disingenuous, evasive and untrue, as appears from other parts of said answer, and is insufficient in law, and the matters and things complained of in said part of said answer constitute no defense to complainant's Bill of Complaint herein, or any part thereof, and said

part of the defendants' answer so as aforesaid last above designated is highly scandalous and should be expunged from said answer and from the records of this Honorable Court.

Tenth. Complainant excepts to the following part of de-
115 fendants' answer as appears on page eight thereof, to-wit:
"And defendants deny all the allegations of said paragraphs ten and eleven, inconsistent with the matters and things above set forth, and all deductions and conclusions of fact and law therein:" for that said allegations in said part of said answer are impertinent, irrelevant and immaterial and contain no defense to complainant's allegations in paragraphs ten and eleven of its complaint herein.

Eleventh. Complainant excepts to the last paragraph of said answer preceeding the prayer thereof, for that said paragraph of said answer is a mere conclusion of law and is not made upon defendants' best knowledge, information, remembrance and belief, and is irrelevant and insufficient, and the matters and things therein contained constitute no defense to complainant's Bill of Complaint herein or any part thereof.

The Complainant finally excepts to said answer as a whole, because of the form thereof, the same not being divided into parts and designated by numbers or otherwise, and the matters and things therein stated being so intermingled the one with the other, relating at the same time to several distinct parts of complainant's Bill of Complaint, and rendering said answer not intelligently divisible unto parts and for exceptions thereto complainant states that neither said answer nor any part thereof is made according to the best and utmost of the defendants' several and respective knowledge, remembrance, information and belief, nor is the same a full, true, direct and perfect answer to the allegations of complainant's Bill of Complaint, not to any part thereof; but said answer and all its parts are evasive, impertinent, irrelevant, immaterial and contradictory in their terms and in many parts highly scandalous; nor does said answer or any of the allegations contained therein constitute any defense to the complainant's Bill of Complaint herein, or any part thereof.

Wherefore, the complainant comes and in all parts aforesaid
116 and generally excepts to the answer of the said defendants, on the grounds alleged that the same is evasive, imperfect, insufficient, irrelevant, impertinent and constitutes no defense to the complainant's Bill of Complaint herein, and is highly scandalous, and complainant humb-y prays that the said defendants may be compelled to put in a full, complete and sufficient answer to its Bill of Complaint herein, and that it have such other relief in the premises as to the Court may seem proper.

OSCAR L. MILES,
LOVICK P. MILES,
J. E. WILLIAMS,
T. M. MEHAFFY,
E. G. MERRIAM,
Solicitors for Complainants.

ALEX G. COCHRAN.
Of Counsel.

Endorsed: Filed April 6th, 1908. W. P. Feild, Clerk.

And on June 6th, 1908, the following proceedings were had, to-wit:

1624.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY
vs.
JOHN E. HAMPTON et al., &c.

Comes the complainant by Oscar L. Miles, Lovick P. Miles, and T. M. Mehaffy, Esqs., its solicitors, and come the defendants by W. F. Kirby, Attorney General, J. F. Sellers and Morris M. Cohn, Esqs., its solicitors, and by agreement of parties hereto it is ordered that this cause be set down for hearing on June 26th, 1908.

And on June 26th, 1908, the following proceedings were had, to-wit:

117 1624.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY
vs.
JOHN E. HAMPTON, ROBERT P. ALLEN, and JOHN W. CROCKETT, as Railroad Commissioners of the State of Arkansas, and Henderson M. Jacoway, as Prosecuting Attorney of the Fifth Judicial District of the State of Arkansas, and James Cochran, as Prosecuting Attorney of the Fifteenth Judicial District of the State of Arkansas.

Decree.

Now, on this 26th day of June, 1908, the above entitled cause came on for hearing, all parties, complainant and defendants, appearing by counsel, it is agreed by the parties that the only question necessary for the final determination of the cause is that raising the constitutionality of the Act of the General Assembly of the State of Arkansas, No. 193, approved April 19th, 1907, entitled "An Act to regulate freight transportation by railroad companies doing business in the State of Arkansas," and after argument of counsel, the Court being well and sufficiently advised in the premises, the Court doth hold the said Act to be unconstitutional and void.

It is therefore adjudged, ordered and decreed that the temporary injunction heretofore and herein granted be and the same is made perpetual, and it is adjudged, ordered and decreed that the defendants, John E. Hampton, Robert P. Allen and John W. Crockett, as Railroad Commissioners of the State of Arkansas, their agents, attorneys and all other persons acting under their direction, and Henderson M. Jacoway, as Prosecuting Attorney of the Fifth Judicial District of the State of Arkansas, and James Cochran, as Prosecuting Attorney of the Fifteenth Judicial District of the State of Ar-

kansas, and their successors in office, be and they are hereby
118 perpetually restrained and enjoined from instituting, prosecuting, aiding, abetting, directing, or causing to be instituted or prosecuted any suit or proceeding whatsoever, by which it is sought to enforce or recover any fines or penalties of or from the complainant, the St. Louis, Iron Mountain and Southern Railway Company, for any violation or violations of the provisions of the Act of the General Assembly of the State of Arkansas, entitled "An Act to regulate freight transportation by railroad companies doing business in the State of Arkansas," approved April 19th, 1907, or any rule or rules, order or orders made by such Railroad Commissioners by virtue of said Act, and particularly by virtue of order No. 346 of said Commission, effective June 19th, 1907.

It is further decreed and ordered that the complainant have and recover of the defendants all costs of this suit, and that execution may issue therefor.

(Signed) JACOB TRIEBER, *Judge.*

And on the same day the following memorandum opinion of Court was filed with the decree in said cause.

In the United States Circuit Court for the Western Division of the Eastern District of Arkansas.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY
vs.
JOHN E. HAMPTON et al., &c. . .

Memorandum of Decision.

In the Argument counsel agreed that the only question necessary for a final determination of this cause is the constitutionality of the Act of the General Assembly of the State of Arkansas, No. 193, approved April 19th, 1907, entitled, "An Act to Regulate Freight Transportation by Railroad Companies doing Business in the State of Arkansas," and if unconstitutional that the injunction
119 may be made perpetual.

The Court holds the Act unconstitutional upon two grounds. *First.* By the last sentence of Section seventeen (17) it is clearly shown that the intention of the Legislature was to apply its provisions to inter-state shipments as fully as to intra-state shipments, and there is nothing in the Act to indicate that the Act would have been passed, unless it could thus be made applicable. This is clearly an interference with inter-state commerce, and as this provision cannot be disregarded without defeating one of the main objects of the Act, it is unconstitutional. *Second.* The requirement to furnish cars is absolute and makes no exceptions for cases of a sudden congestion of traffic, actual inability to furnish cars by reason of their temporary detention in other States or in other places within the same State; none for interference of traffic, occasioned by wrecks,

accidents or strikes. Houston &c. R. R. vs. Mayes, 201 U. S. 321 is conclusive.

For these reasons the temporary injunction heretofore granted will be made perpetual as to proceedings by defendants under the Act of April 19th, 1907, but the injunction is not to apply to any acts by defendants under any other statutes of the State. Let there be a decree accordingly.

(Signed) JACOB TRIEBER, *Judge.*

Endorsed: Filed June 26th, 1908. W. P. Field, Clerk.

Be it remembered, That at a Circuit Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the twentieth day of October, Anno Domini, One Thousand Nine Hundred and Eight, at the United States Court Room, in the City of Little Rock, Arkansas, the Honorable Jacob Trieber, United States District — presiding and holding said Court, the following proceedings were had, to-wit:

120 On March 15th, 1909.

1624.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY
vs.
JOHN E. HAMPTON, ROBERT P. ALLEN, and JOHN W. CROCKETT, as Railroad Commissioners of the State of Arkansas; Henderson M. Jacoway, as Prosecuting Attorney for the Fifth Judicial District of the State of Arkansas, and James Cochran, as Prosecuting Attorney of the Fifteenth Judicial District of the State of Arkansas.

Now on this day come John E. Hampton, Robert P. Allen and John W. Crockett, as Railroad Commissioners of the State of Arkansas and Henderson M. Jacoway, as Prosecuting Attorney of the Fifth Judicial District of the State of Arkansas, and James Cochran, as Prosecuting Attorney of the Fifteenth Judicial District of the State of Arkansas, defendants herein, and file their petition for appeal from the decree rendered herein on the 26th day of June, 1908, to the Supreme Court of the United States, together with their specifications of errors, and pray the Court to fix the amount of bond for costs on said appeal, and the Court having fixed the amount of said bond for costs at Two Hundred and Fifty Dollars, the said defendants presented and filed the bond for costs in the said amount, with Herman Kahn as surety, which bond is approved by the Judge of this Court.

Which Petition for Appeal is as follows:

In the United States Circuit Court for the Western Division of the Eastern District of Arkansas.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY

121 vs.

JOHN E. HAMPTON, ROBERT P. ALLEN, and JOHN W. CROCKETT, as Railroad Commissioners of the State of Arkansas, and Henderson M. Jacoway, as Prosecuting Attorney of the Fifth Judicial District of the State of Arkansas, and James Cochran, as Prosecuting Attorney of the Fifteenth Judicial District of the State of Arkansas.

Petition for Appeal to the Supreme Court.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners, the defendants in the above entitled cause, would respectfully represent and show that in the above entitled cause pending in the United States Circuit Court in and for the Western Division of the Eastern District of Arkansas, there was entered at the April Term, A. D. 1908, of said Court, to-wit: June 26th, 1908, a final decree greatly to the prejudice and injury of your petitioners, which said decree is erroneous and inequitable in many particulars.

Wherefore, in order that your petitioners may obtain relief in the premises, and have opportunity to show the errors complained, your petitioners pray that they may be allowed an appeal in said cause to this Honorable Court and that the proper orders touching the security required of them may be made.

JOHN E. HAMPTON.
ROBERT P. ALLEN,
JOHN W. CROCKETT,
As Railroad Commissioners of the State of Arkansas,

HENDERSON M. JACOWAY,
As Prosecuting Attorney of the Fifth Judicial District of the State of Arkansas,

JAMES COCHRAN,
As Prosecuting Attorney of the Fifteenth Judicial District of the State of Arkansas.

122 By HAL L. NORWOOD, *Attorney General,*
MORRIS M. COHN, *Their Solicitors.*

Endorsed: Filed March 15th, 1909. W. P. Field Clerk.

Which Specification of Errors is as follows:

In the United States Circuit Court for the Western Division of the Eastern District of Arkansas.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY
vs.
JOHN E. HAMPTON, ROBERT P. ALLEN, and JOHN W. CROCKETT, as Railroad Commissioners of the State of Arkansas; Henderson M. Jacoway, as Prosecuting Attorney of the Fifth Judicial District of the State of Arkansas, and James Cochran, as Prosecuting Attorney of the Fifteenth Judicial District of the State of Arkansas.

Specification of Errors.

The defendants complain of the decree rendered herein on the 26th day of June, 1908, for the following reasons:

(1.) The decree improperly decides that the Act of the General Assembly entitled "An Act to regulate freight transportation by railroad companies doing business in the State of Arkansas", approved April 19th, 1907, is unconstitutional under the provisions of Article I, Section VIII, of the Constitution of the United States, as contemplating an interference — between the States.

(2.) The decree is based on the erroneous theory that the matters and things relied upon herein, amount to a deprivation of property, as to the complainant, without compensation, under the
123 Fourteenth Amendment to the Constitution of the United States.

(3.) The said decree is based on the erroneous theory that the matters and things relied upon herein, amount to an impairment of the obligation of a contract, by the General Assembly of the State of Arkansas, and the said officers of said State, under the provisions of Article I, Section X, of the Constitution of the United States.

(4.) The Court erred in rendering said decree, in effect holding that the entire Act of the General Assembly of the State of Arkansas, entitled "An Act to regulate freight transportation by railroad companies doing business in the State of Arkansas", approved April 19th, 1907, was unconstitutional.

(5.) The Court erred in rendering said decree, in the view that the second clause of Section Seventeen of said Act of the General Assembly, was so in conflict with the provisions of Article I, Section VIII, of the Constitution of the United States relating to commerce between the States, as to render the whole Act void.

(6.) That the Court erred in granting a perpetual injunction herein, enjoining the defendants from instituting, prosecuting, aiding, abetting, directing, or causing to be instituted or prosecuted any suit or proceeding whatsoever, by which it may be sought to recover or enforce any fines or penalties of or from the complaint, for any violations of the provisions of the Act of the General Assembly of the State of Arkansas mentioned and referred to in said decree, and above mentioned.

(7.) That the Court erred in granting a perpetual injunction en-

joining defendants from enforcing order No. 346, effective June 19th, 1907, issued and promulgated by the said John E. Hampton, Robert P. Allen and John W. Crockett, as Railroad Commissioners of the State of Arkansas, or suing for or recovering any penalties under or by virtue thereof.

(8.) That the matters and things presented in the Bill and
124 Answer, upon which this cause was submitted, did not warrant the making of said decree.

And, for the causes and reasons aforesaid, the defendants pray that the said decree be reversed.

HAL L. NORWOOD,
Attorney General,
MORRIS M. COHN,
Solicitors for the Defendants.

Endorsed: Filed March 15th, 1909. W. P. Feild, Clerk.

Which Bond for Costs on Appeal is as follows:

Know all men by these Presents:

That we, John E. Hampton, Robert P. Allen and John W. Crockett, as Railroad Commissioners of the State of Arkansas, and Henderson M. Jacoway, as Prosecuting Attorney of the Fifth Judicial District, and James Cochran, as Prosecuting Attorney of the Fifteenth Judicial District of the State of Arkansas, as principals, and Herman Kahn, as surety, are held and firmly bound unto the St. Louis, Iron Mountain and Southern Railway Company in the full and just sum of Two Hundred and Fifty Dollars ($250.00) to be paid to the said St. Louis, Iron Mountain and Southern Railway Company, its successors and assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 15th day of March, in the year of our Lord one thousand nine hundred and nine.

Whereas, lately at the April Term A. D. 1908, of the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas, in a suit depending in said Court between St. Louis, Iron Mountain and Southern Railway Company, plaintiff, and John E. Hampton, Robert P. Allen and John W. Crockett, as
Railroad Commissioners of the State of Arkansas, Henderson
125 M. Jacoway, as Prosecuting Attorney of the Fifth Judicial District, and James Cochran, as Prosecuting Attorney of the Fifteenth Judicial District of the State of Arkansas, defendants, a decree was rendered against the said John E. Hampton, Robert P. Allen and John W. Crockett, as Railroad Commissioners of the State of Arkansas, and Henderson M. Jacoway, as Prosecuting Attorney of the Fifth Judicial District and James Cochran, as Prosecuting Attorney of the Fifteenth Judicial District of the State of Arkansas, and the said John E. Hampton, Robert P. Allen, and John W. Crockett, as Railroad Commissioners of the State of Arkansas, and Henderson M. Jacoway, as Prosecuting Attorney of the Fifth Judicial District and James Cochran, as Prosecuting Attorney of the

Fifteenth Judicial District of the State of Arkansas, have prayed an appeal of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said St. Louis, Iron Mountain and Southern Railway Company, citing and admonishing it to be and appear in the Supreme Court of the United States within thirty days from and after the date of said citation.

Now the condition of the above obligation is such, That if the said John E. Hampton, Robert P. Allen and John W. Crockett, as Railroad Commissioners of the State of Arkansas, and Henderson M. Jacoway, as Prosecuting Attorney of the Fifth Judicial District and James Cochran, as Prosecuting Attorney of the Fifteenth Judicial District of the State of Arkansas, shall prosecute said appeal to effect, and answer all damages and costs if they fail to make good their plea, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in the presence of—

JOHN E. HAMPTON,
ROBERT P. ALLEN,
JOHN W. CROCKETT,
As Railroad Commissioners of the State of Arkansas,

126 By MORRIS M. COHN, *Attorney.*

HENDERSON M. JACOWAY,
As Prosecuting Attorney of the Fifth Judicial District of the State of Arkansas,
By MORRIS M. COHN, *Attorney.*

JAMES COCHRAN,
As Prosecuting Attorney of the Fifteenth Judicial District of the State of Arkansas,
By MORRIS M. COHN, *Attorney.*

HERMAN KAHN.

Approved by

JACOB TRIEBER, *Judge.*

Endorsed: Filed March 15th, 1909. W. P. Feild, Clerk.

And on March 24th, 1909, the following proceedings were had, to-wit:

1624.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY
vs.
JOHN E. HAMPTON et al., &c.

Come the defendants by Morris M. Cohn, Esq., their solicitor, and file herein their citation duly signed by the Judge of this Court and served on L. P. Miles, at Fort Smith, Arkansas, as solicitor for the St. Louis, Iron Mountain and Southern Railway Company, by W. P. Bean, Deputy Marshal for the Western District of Arkansas.

Which Citation is as follows;

127 UNITED STATES OF AMERICA, *ss:*

To the St. Louis, Iron Mountain and Southern Railway Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal, filed in the Clerk's Office of the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas, wherein John E. Hampton, Robert P. Allen and John W. Crockett, as Railroad Commissioners of the State of Arkansas, and Henderson M. Jacoway, as Prosecuting Attorney of the Fifth Judicial District of the State of Arkansas and James Cochran, as Prosecuting Attorney of the Fifteenth Judicial District of the State of Arkansas, are Appellants and you are appellee to show cause, if any there be, why the decree rendered against the said appellants, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Jacob Trieber, Judge of the United States Circuit Court for the Western Division of the Eastern District of Arkansas this 15th day of March, in the year of our Lord one thousand nine hundred and nine.

JACOB TRIEBER,
U. S. District Judge, Eastern Dist. of Ark., West. Division.

On this 23rd day of March, in the year of our Lord one thousand nine hundred and nine, personally appeared W. P. Bean, Deputy U. S. Marshal before me, the subscriber Wm. S.Wellsher Clerk of the United States Circuit Court at Fort Smith, Arkansas and makes oath that he delivered a true copy of the within citation to L. P. Miles Solicitor for St. Louis, Iron Mountain and Southern Railway Company. Done at Fort Smith in the Western District of Arkansas.

W. P. BEAN.

Subscribed to and sworn to before me the 23rd day of March, 1909.

WM. S. WELLSHER,
Clerk U. S. Circuit Court, W. D. of Ark.

Endorsed: Filed, March 24, 1909. W. P. Feild, Clerk.

128 UNITED STATES OF AMERICA,
Western Division of the Eastern
District of Arkansas:

I, W. P. Feild, Clerk of the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas, in the Eighth Circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct and compared copies of the originals remaining of record in my office, and constitute a true copy of the record and of the specification of errors and of all proceedings in case of St. Louis, Iron Mountain and Southern Railway Company

vs. John E. Hampton, et al. as Railroad Commissioners of the State of Arkansas.

In witness whereof, I have hereunto set my hand and seal of said Court, this (6th) day of April, in the year or our Lord, One Thousand Nine Hundred and Nine and of the Independence of the United States of America, the One Hundred and thirty-third.

Attest:

[The Seal of the Circuit Court of East. Dist. Ark., Western Division, U. S. A.]

W. P. FEILD, *Clerk.*

Endorsed on cover: File No. 21,625. E. Arkansas C. C. U. S. Term No. 204. John E. Hampton, Robert P. Allen, and John W. Crockett, as railroad commissioners of the State of Arkansas, et al., Appellants, vs. St. Louis, Iron Mountain & Southern Railway Company. Filed April 22d, 1909. File No. 21,625.

IN THE

Supreme Court of the United States

JOHN E. HAMPTON, ROBERT P. ALLEN AND JOHN W. CROCKETT, AS RAILROAD COMMISSIONERS OF THE STATE OF ARKANSAS, ET AL., APPELLANTS,

vs. No. 204

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, APPELLEE.

BRIEF FOR APPELLANTS.

ABSTRACT OF THE CASE.

The appellee, a railroad company, and common carrier of persons and goods, owning and operating lines of railroad, between points in Arkansas, and between points located in that State and points in other States, filed its bill of complaint in equity, in the Circuit Court for the Western Division of the Eastern District of Arkansas, praying, for the reasons

therein set forth, that the appellants, as the Railroad Commission of Arkansas, and the prosecuting attorneys of the Fifth and Fifteenth Judicial Districts of that State, under the orders of the Commission, be "restrained and enjoined from instituting, prosecuting, aiding, abetting, directing or causing to be instituted or prosecuted any and all suits of whatsoever nature by which it may be sought to enforce or recover the fines and penalties" contemplated by the Act of the Legislature of that State, approved April 19th, 1907, more popularly and familiarly known as "The Barker Act" (because it was introduced by a Senator Barker), and certain orders of the said Railroad Commission, being Order No. 346 and two Orders No. 353A, one being an amendment of the other. (Printed Record, 1 to 13.)

The Act of April 19th, 1907, was copied at length, and made Exhibit "C" to the bill of complaint, and it appears on pages 26 to 33 of the printed record. The orders of the Commission complained of in the bill are copied at length on pages 33 to 44 of the printed record, and constitute Exhibits "D," "E" and "F" thereto.

Later on the appellee filed its supplemental bill, which was a repetition of the original bill and contained some additional matters. (Printed Record, 46 to 59, inclusive.)

An answer was filed on behalf of the appellants. (Printed Record, 65 to 70, inclusive.) The case was submitted upon the supplemental bill and answer, and under a stipulation which is recited in the decree, and a decree was rendered in favor of the appellee. (Printed Record, 74.)

The decree recites:

"Now, on this 26th day of June, 1908, the above entitled cause came on for hearing, all parties, complainant and defendants, appearing by counsel, it is agreed by the parties that the only question necessary for the final determination of the cause is that raising the constitutionality of the Act of the General Assembly of the State of Arkansas, No. 193, approved April 19th, 1907, entitled 'An Act to regulate freight transportation by railroad companies doing business in the State of Arkansas,' and after argument of counsel, the court being well and sufficiently advised in the premises, the court doth hold the said Act to be unconstitutional and void.

"It is adjudged, ordered and decreed that the temporary injunction heretofore and herein granted be and the same is made perpetual and it is adjudged, ordered and decreed that the defendants, John E. Hampton, Robert P. Allen and John W. Crockett, as Railroad Commissioners of the State of Arkansas, their agents, attorneys and all other persons acting under their direction, and Henderson M. Jacoway, as prosecuting attorney of the Fifth Judicial District of the State of Arkansas, and James Cochran, as prosecuting attorney of the Fifteenth Judicial District of the State of Arkansas, and their successors in office, be and they are hereby perpetually restrained and enjoined from instituting, prosecuting, aiding, abetting,

directing or causing to be instituted or prosecuted any suit or proceeding whatsoever, by which it is sought to enforce or recover any fines or penalties of or from the St. Louis, Iron Mountain and Southern Railway Company, for any violation or violations of the provisions of the Act of the General Assembly of the State of Arkansas, entitled 'An Act to regulate freight transportation by railroad companies doing business in the State of Arkansas,' approved April 19th, 1907, or any rule or rules, or order or orders made by such Railroad Commissioners by virtue of said Act, and particularly by virtue of Order No. 346 of said Commission, effective June 19th. 1907."

A "Memorandum of Decision" also appears in the record, which states the two grounds upon which the circuit court held the Act to be unconstitutional, and the orders aforesaid to be unenforcable. These grounds are stated to be as follows:

"*First.* By the last sentence of section seventeen (17) it is clearly shown that the intention of the Legislature was to apply its provisions to interstate shipments as fully as to intrastate shipments, and there is nothing in the Act to indicate that the Act would have been passed unless it could thus be made applicable. This is clearly an interference with interstate commerce, and as this provision can not be disregarded without defeating one of the main objects of the Act, it is unconstitutional.

"*Second.* The requirement to furnish cars is absolute and makes no exceptions for cases of a sudden congestion of traffic, actual inability to furnish cars by reason of their temporary detention in other States or in other places within the same State; none for interference of traffic occasioned by wrecks, accidents or strikes." (Printed Record, 75, 76.)

The decree and the rulings were had on a state of case disclosed by the original and supplemental bills and the answer and the Order No. 353A, to be as follows:

CASE SHOWN BY THE RECORD.

For many years the St. Louis, Iron Mountain and Southern Railway Company had "failed and refused to supply the shippers of Arkansas, engaged in shipping property from one point in the State to the other points in the State, with cars; that in this manner it (had) seriously affected all lines of business in said State for many years * * *; that the failure to furnish said cars was not due or owing to any emergency or conditions which said complainant, by the exercise of common law diligence could not and was not required to be prepared for; that said failure was not only caused by its own wilful acts in utter disregard of the rights of shippers, but was the result of a policy pursued by said complainant, that had ruined and destroyed persons engaged in business in said State; that to partially meet the said evils legislation was required whereby the complainant could be required to furnish cars upon notice, the purpose and intent of such legislation being to make the common law obligations of complainant, as to common carrier by rail, more definite and certain rather than to create penalties; that prior to and after the enactment of the said Act of April 19th, 1907, the complainant was interested in and controlled the Western Coal and Mining Company, which was engaged in selling and mining coal, by car load and otherwise, in competition with other companies and individuals owning and operating coal mines in said State of Arkansas; that although the said complainant failed and refused to supply cars to

said other coal operators, upon one pretext or another, prior to and after the passage of said Act of April 19th, 1907, it always appeared to have a sufficient number of cars to supply the need of said Western Coal and Mining Company. * * * That evils which arose from the policy of complainant, in relation to its failure and refusal to furnish a proper supply of cars to said coal operators, in the same manner as cars were supplied to the said Western Coal and Mining Company, finally induced the passage of the Act of April 19th, 1907, aforesaid; it being intended by said Act not to discriminate against cars to be used in interstate traffic, but it not being contemplated by said Act to improperly deal with or burden interstate commerce." (Printed Record, 68, 69; extract from the answer. See also Order No. 353A, pages 39 to 44.)

The statement just given is taken from the answer, and was responsive to the original and supplemental bill, both of which undertook to make it appear that in the issuance of Order No. 353A, on the petition of coal operators in Johnson and Franklin counties, Arkansas, the appellee had been subjected to a burden, due to no fault on its part, growing out of events beyond its control.

The petition so filed is mentioned in the original and supplemental bills, being the petition of Hill, Hackney & Company and others before the Railroad Commission of Arkansas. It there appears, and it also appears by allegation in the answer, and from Order No. 353A itself, that the appellee was heard on the petition, and that the order was made after care

ful consideration, on evidence. (See Printed Record, 52 for the matter set forth in the supplemental bill.) To paragraph five of the bill the answer responded: "That the parties mentioned in paragraph five * * * comprised such rival and competing coal operators, who, by petition to said Railroad Commission, besought its aid to compel the said complainant to obey the reasonable requirements of the law in relation to the supply of cars on the ..... day of October, 1907. That said Railroad Commission did not thereupon act in anywise arbitrarily, but gave timely notice to complainant of the filing said petition, and gave all parties their proper opportunity to present all matters and things that should be presented to said Commission upon a hearing thereof. That the said complainant for a long time endeavored to defeat a fair inquiry into said matters, by refusing to produce the books relating to the supply of cars so made to said Western Coal and Mining Company, and that at the final hearing of said matters presented by said petition it appeared to said Commission that the said complainant through its wilful act, for the purpose of aiding and abetting the said Western Coal and Mining Company in furthering its business of selling coal for commercial purposes, and defeating the competition offered by the petitioners in said matter, had supplied

said company with sufficient cars; but had failed and refused to supply such cars to complainant." (Printed Record, 39.)

The supplemental bill also set forth that the failure on appellee's part to supply cars was owing to an unusual demand upon its supply of cars, and to the necessity of using cars to haul coal for its own use, produced by the destruction of a large quantity of coal, which it had stored, by fire. (Printed Record, 56, paragraph xi of the supplemental bill.) But this allegation was denied in the answer. (Printed Record, 69.)

The original and supplemental bills set up the following additional reasons for holding the Act of April 19th, 1907, and the orders of the Commission, unconstitutional and void:

A. The Act makes no provision for any exception to the rule which requires the furnishing cars to shippers upon short notice, and does not allow for contingencies, such as congestion of traffic, or delays occasioned by washouts and other unavoidable events. (Paragraph vi, supplemental bill, Printed Record, 53.)

B. The Act and orders of the Commission are in conflict with Section 3 of the Act of Congress relating to interstate commerce; and they do not make proper allowance for the duty appellee owes to other localities in supplying cars. (Printed Record, 54, paragraph viii, supplemental bill.)

C. The cars of appellee mentioned and referred to in the Act and orders were and are instrumentalities of interstate commerce and are exclusively under the control of the Interstate Commerce Commission. (Printed Record, 54, 55, supplemental bill, paragraph ix.)

D. The effect of the Act of April 19th, 1907, and the orders is to impose heavy penalties upon the appellee, which are unjust, oppressive, harsh and excessive, and operate so as to constrain the appellee to yield instant obedience to the said Act and orders, without question, and without a fair opportunity to have the validity thereof determined in due and orderly course of judicial proceedings. (Printed Record, 55, 56, supplemental bill, paragraph x.)

The allegation in the bill that the Commission is constantly attempting to impose upon the appellee the burden of furnishing cars to shippers in Arkansas, for the movement of freight in the State of Arkansas "and elsewhere" is denied in the answer. (Printed Record, 57, paragraph xii of bill, and 69 as to answer.)

There are many recitals in the answer, other than those already quoted or mentioned, which go to the point that no orders of the Railroad Commission were arbitrary or beyond its province, and it was therein averred that, if suits were instituted in the courts against appellee for penalties, it would have its day in court to answer thereto. (Printed Record, 70, 71.)

Though the constitutionality of the Act of April 19th, 1907, and the orders of the Commission referred

to, is the issue which was submitted to the circuit court, that does not mean that this question was submitted as a moot question, irrespective of the features of the case, which were presented by the record. There is, we submit, a vast difference between a case where a law of a State is being oppressively used and one where it is not being so used. And, we assume, an Act of a State Legislature and orders of a State Railroad Commission, will not be judged by any standard other than that disclosed by the facts in the record. At least it will not be assumed that such an Act and orders can be oppressively used, unless that conclusion is imperative, in a theoretical point of view.

ERRORS ASSIGNED.

The following errors are assigned to the decree and findings of the circuit court:

1. The decree improperly decides that the Act of April 19th, 1907, is unconstitutional under Section viii of Article I, of the Constitution of the United States.

2. There was no deprivation of property within the meaning of the Fourteenth Amendment to the Constitution of the United States,

3. There is no impairment of the obligation of a contract within the meaning of the Constitution of the United States.

4, 5. It was improper and erroneous to hold the whole of the Act of April 19th, 1907, unconstitutional.

6, 7. The circuit court should not have granted a perpetual injunction depriving the appellants of the right to enforce fines and penalties of any kind or under any circumstances, for violation of the provisions of the said Act and the orders of the Commission under it.

8. The matters and things presented by the bill and answer, upon which the cause was submitted, did not warrant the making of the decree. (Printed Record, 78, 79.)

STATEMENT OF POINTS INVOLVED.

1. The original and supplemental bills proceed, among other things, upon the idea that, because the transportation of cars in interstate hauls, constitutes a very large percentage of the railroad business of the country, therefore, the furnishing of cars, as contemplated by the Act in question, is not within the State power, since, *ex hypothesi,* the matter of directing supply of cars for intrastate traffic is bound,

directly or indirectly, to affect interstate transportation.

But the material matters set forth in the bill do not involve any such danger. And no matter how extensive interstate traffic may be as compared with state traffic, it does not follow that Congress may legislate upon matters committed to the States, even though the law would tend to become more uniform if this were done.

Employers' Liability Act, 207 *U. S.*, 463.
Adair vs. United States, 208 *U. S.*, 176, 180.
Railway Company vs. McKendree,
203 *U. S.*, 514.

Besides, Congress has not undertaken to cover the whole subject of supply of cars; and this is material.

2. The appellee has not been damnified by any action of the Railroad Commission had prior to the filing of its bill; unless the Order No. 346, which was a reproduction of the Act of April 19th, 1907, itself, without more, was unconstitutional.

3. The main ground of appellee's complaint is that the Railroad Commission made the Order No. 353A, which aimed at having the prosecuting attorneys of the Fifth and Fifteenth Districts to institute suits for penalties, for the failure of the appellee to furnish

cars to the coal operators of Johnson and Franklin counties, Arkansas, in September, 1907. And in that connection it magnified the quantity of penalties which might be imposed upon it. (See Printed Record, 39 to 44.) But in the decree of the circuit court the ground so selected was passed over as of no importance.

4. The decree rests upon grounds which do not constitute the gravamen of the bill, but are general and theoretical, and pass over the matters so principally relied upon as if of no merit.

5. Yet the decree perpetually enjoins the enforcement of Order No. 353A.

6. Appellee is entitled only to raise the question of unconstitutionality of the Act of April 19th, 1907, so far as that is material to its case.

Gas Illuminating Co. vs. Lungren, 152 *U. S.*, 200.

Howard vs. Stillwell, 139 *U. S.*, 199.

Telegraph Co. vs. Hall, 124 *U. S.*, 444.

Phillips Construction Co. vs. Seymour, 91 *U. S.*, 646.

Smith vs. Cowdry, 1 *How.*, 28.

The Appollon, 9 *Wheat.*, 362.

7. The mere imposition of penalties by a statute does not, of itself, furnish a cause of action to every citizen or corporation which, in time to come, may be affected by it. And penalties in large sums have been upheld where they were justified by the course of conduct of the complaining party.

Waters P. Oil Co. vs. Texas, 212 *U. S.,* 86, 111.
Armour Packing Co. vs. United States, 208 *U. S.,* 274.
Loewe vs. Lawler, 208 *U. S.,* 274.
Seaboard Air Line vs. Seegers, 207 *U. S.,* 73.
Chattanooga F. Co. vs. Atlanta, 203 *U. S.,* 390.
Marvin vs. Trent, 199 *U. S.,* 22.
National Oil Co. vs. Texas, 197 *U. S.,* 115.
Railway Co. vs. May, 194 *U. S.,* 267.
Addyston Pipe Co. vs. United States, 175 *U. S.,* 211.

Corporations, especially powerful ones, can only be reached by means of large penalties.

See cases last cited.

Also—

N. Y. Central R. R. vs. United States, 212 *U. S.,* 481, 495.

The decision in *Ex Parte Young,* 209 *U. S.,* 125, relied upon by appellee, dealt with the rate question.

The State law there made the rate, which it was claimed was confiscatory, and the State law imposed very severe penalties, including imprisonment, for failure to apply the rate. The circuit court had enjoined the enforcement of the State law, and the Attorney General of the State, Mr. Young, undertook to disregard the injunction. He was haled before the circuit court for this contempt of its order. And he was found guilty of contempt. Thereupon he applied to this court to be released by *habeas corpus*, claiming that he was not amenable to that court, and that its order was void. This position was held untenable and the order holding him for contempt was allowed to stand. In passing upon the merits of the controversy in which the injunction was granted this court held that there was, in that case, an oppressive use of State power, amounting to a denial of justice. The facts and issues there have no analogy to the facts and issues in this case.

8. The decree and the bills deal with imaginary evils, in this, that matters are made the basis of complaint and determination which lie altogether in the lap of the future, and have not transpired. In other words, orders for cars, in cases where the appellee will be unable to furnish the same by reason of strikes or holocausts, or earthquakes, or other *vis major*, have

not yet been made; yet these are made the basis of relief. Imaginary evils will not be considered, in the determination of causes.

United States vs. Railroad Companies (Commodities Clause Cases), 213 *U. S.*, 366, 407, 408.

The Employers' Liability Cases, 207 *U. S.*, 463.

Angle vs. Railroad Co., 151 *U. S.*, 1.

Amy vs. Watertown, 130 *U. S.*, 301.

Doyle vs. Insurance Co., 94 *U. S.*, 535.

Brewer vs. Bougher, 14 *Pet.*, 178.

Fletcher vs. Peck, 6 *Cr.*, 87.

Calder vs. Bull, 3 *Dall.*, 386.

9. The preceding points are touched upon to show that so far as this case is concerned, the appellee is not in the position of one who can claim that an oppressive use is being made of an enactment of the State of Arkansas, or any orders of its Railroad Commission, and that unless the Act and orders complained of are vicious in principle, without reference to the use they are being put to, the decree of the circuit court is erroneous. We take up more fully and detail the question as to the constitutionality of the Act and orders aforesaid [We assume that it is best to avoid repetition, and once for all to fully present that matter.]

THE ACT OF THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS, OF APRIL 19TH, 1907, AND THE ORDERS OF THE RAILROAD COMMISSION.

As already stated the Act of April 19th, 1907, is copied at length in the printed record, on pages 26 to 33. While Order No. 346 was made and promulgated by the Railroad Commission, under the Act, it seems to have been but a copy of that Act, and was unnecessary. Section 23 of the Act, under which the order seems to have been made, did not contemplate such action.

As shown by the answer, the Act was called for by an evil practice of the appellee, of long standing. And it bears evidence that it is not one-sided.

A. Section 1 of the Act provides for the furnishing of cars within a certain period. Section 2 regulates the movement of freight cars. Section 3 provides for notice of arrival of freight, and Section 4 provides for the manner of delivery of freight. Section 5 prescribes demurrage charges applicable to both shipper and railway company. And these charges are also regulated in Sections 6, 7 and 9 to 15, inclusive Section 8 defines "legal notice." Section 16 prohibits discrimination on the part of the railroad company, its officers or employes.

Section 17, after dealing with connecting carriers and providing for the furnishing of reasonable facilities in such cases, for the transportation of freight, contains the following independent clause:

"Interstate railroads shall furnish cars on application for interstate shipments the same in all respects as other cars are to be provided by interstate railroads under the provisions of this Act."

There is no provision of the Act which obliges interstate railroads to furnish cars, but the Act may be construed to contemplate this. However, the aim of the clause is to make it clear that there shall be no discrimination against cars for interstate shipments.

Section 18 defines "railroad companies" and other terms used in the Act. Section 19 confers jurisdiction upon certain courts of the State in relation to matters arising under the Act. Section 20 seeks to reach the evil of bribing railroad trainmen in order to secure speedier service. Section 21 gives action for damages caused by railroad companies by failure to comply with the Act.

Section 22, in addition to the action for damages, provides that the penalty for disregard of the Act shall be as follows:

Not less than five hundred dollars nor more than three thousand dollars for each violation of the Act or

the rules and regulations of the Commission based upon the Act; such penalty to be recovered by civil suit in the name of the State of Arkansas, in the county where the violation occurred. The Commission is to institute the actions, through the prosecuting attorney of the proper district, who is to receive a fee not to exceed twenty-five per cent of the amount recovered.

Section 23 gives the Commission power to formulate rules for the furnishing cars and transportation and delivery of freight, in compliance with the provisions of the Act. Section 24 provides that the remedies given by the Act shall be cumulative.

B. There are provisions in the Act making allowance for contingencies and occurrences over which the railroad company may have no control. Section 2 provides, among other things:

"The period during which the movement of freight is suspended on account of accident or any cause not within the power of the railroad company to prevent, shall be added to the free time allowed in this section, and counted as additional free time."

The Act is entitled "An Act to regulate freight transportation by railroad companies doing business in the State of Arkansas." And the furnishing of cars is provided for as part of the transportation, otherwise called "movement of freight," contemplated by the Act. If the movement of freight includes the furnishing of cars then here is a clause which, in terms, provides for contingencies and accidents.

Section 6 also provides that

"The railroad companies shall not be compelled to furnish cars for future shipments to parties in default as to payment of demurrage charges," etc.

C. The decree and findings of the circuit court were handed down on June 26, 1908. On March 1, 1909, the Supreme Court of Arkansas passed upon the Act in question, under circumstances similar to those obtaining here. The case so decided is the case of *Oliver vs. Chicago, Rock Island and Pacific Railway Company*, 89 *Ark.*, 466. There the points decided were the same that were passed upon by the circuit court. First, the court construed the Act with reference to the clause of Section 17 of the Act, which the learned judge of the circuit court held to make the Act unconstitutional. The Supreme Court declined to say whether in its judgment the clause was unconstitutional, but assuming that it was, as conceded by counsel in that case, it was there decided that the Act was effective and constitutional as to intrastate transportation, and that the clause might be dispensed with without affecting the rest of the Act.

Second, the court there dealt with the point whether the Act was unconstitutional, because it did not provide for reasonable defenses by the railroad companies. The court said as to this:

"Must the Act be held unenforceable as a State law for the reason that it does not upon its face expressly provide for reasonable defenses to be interposed when actions may be brought under it? The whole law is not in the Act of the Legislature; it is party there, partly in the Constitution, and partly in the higher rights of property that the courts will always protect."

89 *Ark.*, 469.

Finally it held, following a line of cases decided by the same court under other, but similar Acts, where express exceptions allowing for contingencies and the like did not appear in the enactment, that if this law provided for no defense which amounted to an excuse for not furnishing cars, it must be construed so as to let in all of such defenses.

Id.

See also—

Railway Company vs. Clay Gin Co.,
77 *Ark.*, 357, 362.

Railway Company vs. State, 85 *Ark.*, 311.

The Supreme Court of Arkansas usually construes the Acts of the Legislature of that State not to relate to interstate commerce though there may be nothing in the Acts themselves to that point.

Gunn vs. White Sewing Machine Co.,
57 *Ark.*, 24.

Railroad Company vs. Hanniford,
49 *Ark.*, 291.

This is in accordance with the principle that that interpretation will be adopted which will sustain an Act rather than the contrary.

United States vs. Railroad Companies (Commodities Clause Cases), 213 *U. S.*, 366, 407, 408.

Knights Templer Co. vs. Jarman, 187 *U. S.*, 197, 205.

And the construction put upon the Act of April 19th, 1907, by the Supreme Court of Arkansas, will be followed by this court.

Hammond Packing Co. vs. State of Arkansas, 212 *U. S.*, 322, 347.

Waters P. Oil Co. vs. Texas, 177 *U. S.*, 28.

Henry vs. Nicolay, 95 *U. S.*, 619.

Railroad Company vs. Adams, 181 *U. S.*, 580.

D. The Supreme Court of Arkansas declined to express an opinion on the point, as to whether the clause of Section 17 found objectionable by the circuit court was in fact so. That clause means that in the furnishing cars railroads which are interstate in their relations, shall so far as interstate cars are involved, not be compelled to discriminate against the same by anything contained in the Act. A reasonable construction would have made the Act state the same thing.

Such a provision showed quite clearly that the aim was not to burden interstate commerce, or put the railroad company in such a position that it could not comply with its interstate obligations.

If the decision in *Houston and Texas Central Railroad vs. Mayes,* 201 *U. S.*, 321, is any criterion on this point, it is authority for the proposition that the States (and their Railroad Commissions) may deal with the subject of furnishing cars, even though some or all of the cars to be furnished are destined for interstate transportation.

There a number of stock cars were ordered by a shipper in Texas, for live stock, to be shipped to Oklahoma. The case was on the border line as to whether or not sufficient allowance had been made there for accidents and contingencies, for there was a strong dissent. And there can be no doubt that if in that instance the same stand had been taken by the Supreme Court of Texas, as has been taken by the Supreme Court of Arkansas, in the case cited, the order of the Commission in the Mayes case and the law of the State would have been sustained by an undivided court. So that it is not an undue interference with interstate commerce, for the local State bodies to deal with the car-supply question even though the cars are destined

outside of the State. The more recent decision in the case of *Missouri Pacific Railway vs. Larabee Milling Company,* 211 *U. S.*, 612, is equally decisive on that point.

These rulings, not as yet very well understood, evidently go upon the principle that, even though Congress has the power to deal with the whole subject of interstate commerce, in all of its phases, down to the local supply of cars in all parts of the country, yet that there may be State police direction in reference to matters which may be so covered by Congressional legislation, so long as Congress has not dealt with the matter; with this proviso: that the action of the State may not amount to an undue burden upon interstate commerce. City ordinances providing for certain manner of lighting vessels in particular harbors have been sustained, notwithstanding that Congress had provided a general system of lighting applicable to vessels engaged in navigating the seas, while in harbors in the United States. Acts relating to publication of rate tables have been sustained, though they affected transportation between States; Congress not having covered the matter. Laws relating to the licensing of locomotive engineers have been sustained, although such engineers have been employed

in operating engines in interstate commerce. And this, by no means, exhausts the list.

Brig James Gray vs. Ship John Fraser, 21 *How.*, 184.

Railroad Company vs. Fuller, 17 *Wall.*, 560.

Smith vs. Alabama, 124 *U. S.*, 465.

Railway Company vs. Alabama, 128 *U. S.*, 96.

Railway Company vs. Ohio, 173 *U. S.*, 285.

Railway Company vs. Illinois, 163 *U. S.*, 142.

Railway Company vs. Illinois, 177 *U. S.*, 514.

Gladsen vs. Minnesota, 193 *U. S.*, 53.

Atlantic Coast Line vs. Wharton, 207 *U. S.*, 335.

See American Law Review, Sept.-Oct., 1908, 666 *et seq., where the decisions of this court are reviewed.*

E. So that in no point of view was the circuit court justified in holding that the Act of April 19th, 1907, was unconstitutional. It was not entirely unconstitutional because of the clause of Section 17 of the Act, nor because the Act did not set forth at length all the defenses which the railroad companies could set up as reasonable and legal excuses for failure to furnish cars. Thus far the circuit court went and no farther. And in these respects that court has been shown to be in disagreement with the Supreme Court of the State.

F. And furthermore we submit that, in itself, the clause found to be objectionable by the circuit court is not so, because it does not discriminate against interstate commerce, but seeks to provide that interstate commerce shall not be affected thereby in any discriminative way. If the circuit court took the view that the attempt to require the furnishing of cars for property, to be sent beyond the State, was a regulation of interstate commerce, such view seems to be in conflict with the decisions of this court. But even then the question is not involved here, because the answer denies that any such thing obtained.

G. The point is involved here, although that is not necessary to a decision of this cause, as to whether cars are committed to interstate commerce when a notice is sent by the shipper that he requires certain cars for shipments to points in other States. We submit that so long as the cars are not loaded they are not so committed to interstate or intrastate commerce that their destination may not be changed; and that therefore the States ought to properly deal therewith.

See—

Coe vs. Errol, 116 *U. S.*, 517.

American, Etc., Co. vs. Speed, 192 *U. S.*, 500.

Railroad Co. vs. Mayes, 201 *U. S.*, 321.

Missouri Pac. Ry. Co. vs. Larabee Milling Co., 211 *U. S.*, 612, *especially the opinion of Mr. Justice Holmes.*

We are aware that, under the coupler and air brake Acts of Congress, it has been held that dining cars standing upon sidetracks are committed to interstate commerce within the meaning of those Acts. This and similar cases have been decided upon the theory that cars may be engaged in transportation although they may be temporarily on a side track, awaiting the coming of an engine or train to take them on. Such cars are equipped or loaded for the haul, which at the time is impending, and are in use for that purpose.

H. As to the orders of the Railroad Commission it may be said, that if the Act of April 19th, 1907, is unconstitutional, Order No. 346 ought not to have been made. Really the order was unnecessary. As to Order No. 353A, the facts show it to have been proper.

CONCLUSION.

We submit that we have shown:

1. That the Act of April 19th, 1907, does not improperly deal with or interfere with interstate commerce, either under the last paragraph of Section 17, or otherwise.

2. That the Act, as construed by the Supreme Court of Arkansas, since the decree was handed down

by the learned judge of the circuit court, is innocuous, both in reference to the last paragraph of Section 17, and because it does not expressly provide, on its face, for all the defenses which a court ought to consider, in relieving a railroad company from the consequences of its failure to furnish cars when ordered.

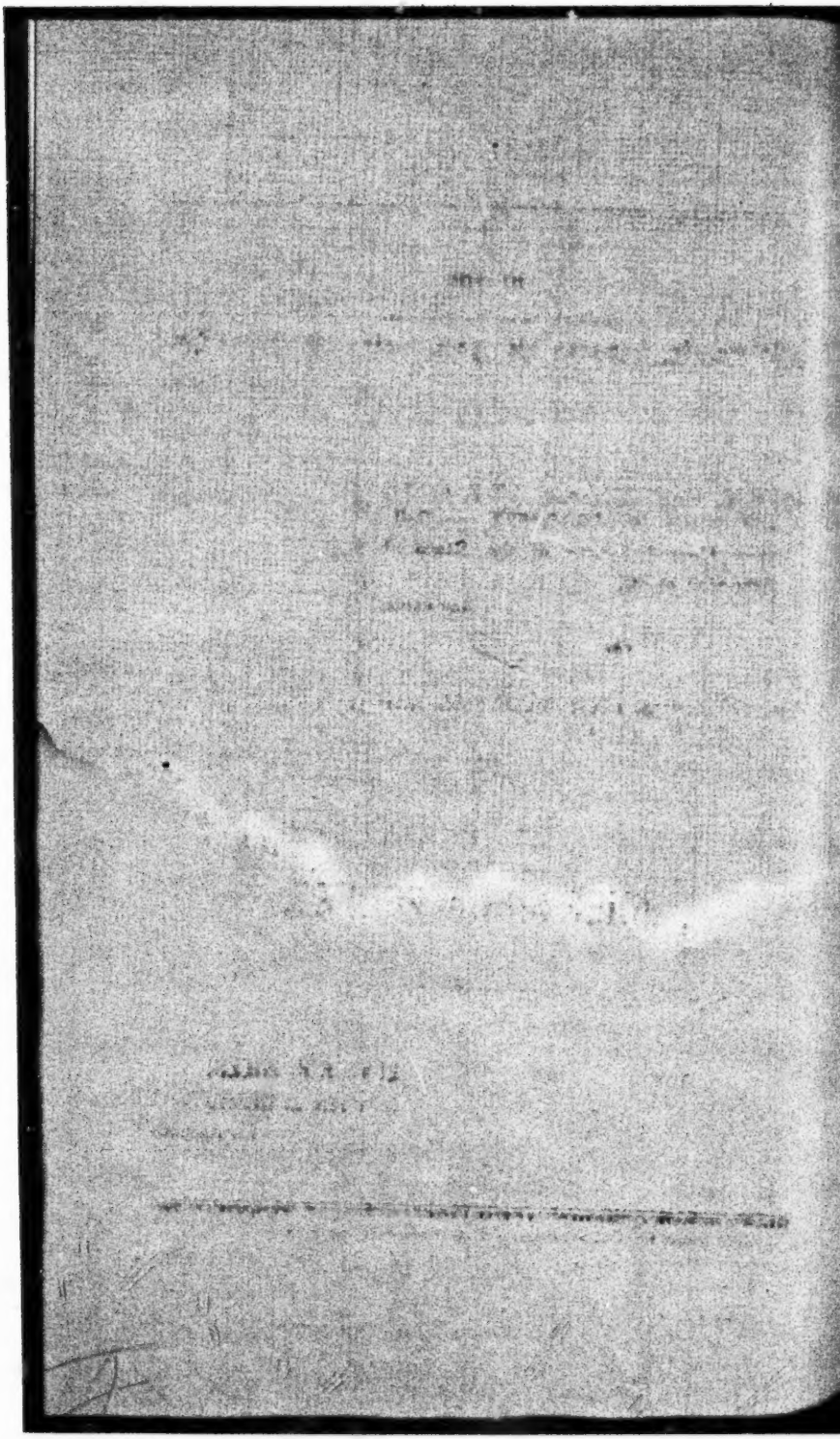
3. There is no equity in the bill or the supplemental bill. On all essential points the allegations of these bills were denied by the answer, and the cause was submitted on these.

4. The orders of the Railroad Commission of Arkansas, whether Order No. 346 or Order No. 353A, are not invalid for unconstitutionality, on any ground.

And we respectfully submit that the decree of the circuit court is erroneous and should be reversed, and that the bill and supplemental bill should be dismissed for want of equity.

Respectfully,

HAL L. NORWOOD,
Attorney General of Arkansas,
MORRIS M. COHN,
For Appellants.



IN THE

SUPREME COURT OF THE UNITED STATES.

JOHN E. HAMPTON, ROBERT P. ALLEN and JOHN W. CROCKETT, as Railroad Commissioners of the State of Arkansas et al.,

Appellants,

vs.

THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY,

Appellee.

BRIEF FOR APPELLEE.

STATEMENT OF CASE.

As recited in brief for appellants, "appellee, a railroad company and common carrier of persons and goods, owning and operating lines of railroad between points in Arkansas, and *between points located in that State and points in other States* (italics are ours), filed its bill of complaint in equity * * * praying, for the reasons therein set forth, that the appellants * * * be restrained and enjoined from instituting, prosecuting, aiding, abetting, directing or causing to be insti-

tuted or prosecuted any and all suits of whatsoever nature by which it may be sought to enforce or recover the fines and penalties contemplated by the Act of the Legislature of that State, approved April 19, 1907, * * * and certain orders of the Railroad Commission being order No. 346 and order No. 353-A."

It was alleged in the bill of appellee that it was engaged in interstate commerce in the States of Missouri, Arkansas, Tennessee, Illinois, Louisiana, Kansas and the Indian Territory, owning its continuous lines into the several States named, and engaged in interstate commerce through its connections between points in all other States of the United States, and that it was a common carrier, subject to the Act of Congress of the United States of February 4, 1887, entitled "An Act to Regulate Commerce" and the several amendments thereto (T. R., p. 4). This allegation was not denied. It was further averred that the freight cars required by the Arkansas authorities to be furnished, under heavy penalties, were "instrumentalities equipped, prepared, held and used by your orator for the movement of interstate commerce," and that they were exclusively under the control of the Interstate Commerce Commission of the United States, and that any acts of the Arkansas Legislature or rules of the Commission requiring the furnishing of cars to shippers under heavy penalties were void, as in violation of the commerce clause of the Constitution (T. R., p. 10).

The Legislature of Arkansas passed an Act, which was approved April 19, 1907, which, among other things, required railroad companies to furnish to shippers such car or cars as they might demand, upon certain notice being given, the cars to be furnished within

given times. Failure to comply with this requirement made the railroad company liable to the shipper in the sum of five dollars per car per day or fraction of a day (T. R., p. 26).

It was further provided, by Section 22 of the Act, that failure to comply with the provisions of the Act or with any requirement of the Railroad Commission as to furnishing cars on application of shippers, should involve the railroad company in a penalty of not less than five hundred nor more than three thousand dollars for each violation of the Act (T. R., 32). The Railroad Commission made its order No. 346, following the language of the statute as to requirements for the furnishing of cars.

By Act of the Legislature, approved March 11, 1899, it was provided that any person or corporation operating a railroad, etc., who should violate any rules of the Commission regarding railroads, should be liable to a penalty of not less than five hundred dollars nor more than three thousand dollars for each violation of the rules of the Commission (T. R., p. 20).

During the summer of 1907, certain coal operators made demands upon appellee for cars which were not furnished, and made complaint thereafter to the Commission, and the Commission issued its orders "353-A" and "353-A *nunc pro tunc*", finding the appellee guilty of violating its orders and the Act of April 19, 1907, and directing suits to be instituted for the recovery of the penalties hereinbefore mentioned, aggregating an enormous amount (T. R., pp. 39 to 44). A permanent injunction was granted, the learned trial Judge holding the Act of April 19, 1907 invalid, the decree simply declaring the Act "to be unconstitutional and void" (T. R., p. 74). In a memorandum of decision filed by

the Court at the time, the Court construed the Act to be void because the Legislature had made its provisions apply to interstate shipments as fully as to intrastate shipments, and therefore it should fall under the ruling of this Court in Howard v. Ill. Cent. Railroad Co., 207 U. S. 463. The learned trial Judge held it also void because its requirements made no exceptions for cases of sudden congestion of traffic or actual inability to furnish cars, and was therefore in conflict with the rule laid down in Houston, Etc., Railroad v. Mayes, 201 U. S. 321. Subsequently, the Supreme Court of Arkansas, in the case of Oliver v. Chicago, Rock Island & Pacific Railway Company, 89 Ark. 466, sustained the Act as to intrastate commerce, and held adversely to the holdings of the Court below in this case upon the points outlined by the Court in his opinion.

BRIEF AND ARGUMENT.

The contention of appellee is that the Act of April 19, 1907, and the requirements of the Railroad Commission as to the furnishing of cars under its order No. 346 of June 19, 1907, when applied to carriers such as appellee, and engaged in interstate commerce, as appellee is shown and conceded by this record to be, is void, as being in effect a burden upon interstate commerce.

The proposition is simply this: That if the power be conceded to a state to require, under heavy penalties, the furnishing of cars by an interstate carrier for intrastate shipments, then, as between the states served by such common carrier, the State exacting the heaviest penalties will bring to its intrastate shippers an undue proportion of the cars available to such carrier; and likewise, if states are conceded the power to require the furnishing of cars by interstate carriers, under heavy penalties, to intrastate shippers, then, if the penalties imposed by Federal authority for failure to furnish cars for interstate traffic are less than those imposed by the states, the carriers will devote to intrastate traffic an undue proportion of their available cars.

Section 3 of the Act to Regulate Commerce provides, among other things, as follows:

> "That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to sub-

> ject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever,"

and the Court below, therefore, very properly held that the act and orders of the Commission are in conflict with Section 3 of the Act of Congress relating to interstate commerce; and they do not make proper allowance for the duty appellee owes to other localities in supplying cars.

It was held in Southern Railway Co. v. United States, decided October, 1911, that all cars of any railroad engaged in interstate commerce were subject to the provisions of the "Safety Appliance Act." In that case, speaking of cars of such interstate carriers, the Court said:

> "Cars are seldom set apart for exclusive use in moving either class of traffic, but generally are used interchangeably in moving both."

Congress, in the Act of June 29, 1906, defined "transportation" to include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, etc., and declared it to be the "duty of every carrier subject to the provisions of this Act to provide and furnish such *transportation* (italics are ours) upon reasonable request therefor", and all other provisions of the Act provide penalties for failure to comply with the provisions of the Act.

The doctrine upon which we rely for our contention here is well stated by Judge Sanborn in the case of Shepard v. Northern Pacific Railway Company, 184 Fed., at page 770, in the following language:

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"If the plenary power of the nation to protect the freedom of and to regulate interstate commerce and the attempted exercise by a state of its power to regulate intrastate commerce, or the attempted exercise of any of its other powers, impinge or conflict, the former must prevail and the latter must give way, because the Constitution and the acts of Congress passed in pursuance thereof are the supreme law of the land, and 'that which is not supreme must yield to that which is supreme.' Brown v. Maryland, 12 Wheat. 419, 448, 6 L. Ed. 678; Gibbons v. Ogden, 9 Wheat. 1, 209, 210, 6 L. Ed. 23; Wabash, St. L. & P. Ry. Co. v. Illinois, 118 U. S. 557, 573, 7 Sup. Ct. 4, 30 L. Ed. 244; Covington, Etc., Bridge Co. v. Kentucky, 154 U. S. 204, 211, 212, 216, 217, 222, 14 Sup. Ct. 1087, 38 L. Ed. 962; Houston & T. C. R. Co. v. Mayes, 201 U. S. 321, 327, 328, 26 Sup. Ct. 491, 50 L. Ed. 772; Cleveland, C., C. & St. L. R. Co. v. Illinois, 177 U. S. 514, 517, 519, 521, 20 Sup. Ct. 722, 44 L. Ed. 868; Mississippi Railroad Commission v. Illinois Central R. Co., 203 U. S. 335, 343, 27 Sup. Ct. 90, 51 L. Ed. 209; Atlantic Coast Line R. Co. v. Wharton, 207 U. S. 328, 28 Sup. Ct. 121, 52 L. Ed. 230; Western Union Telegraph Co. v. Kansas, 216 U. S. 1, 24, 27, 37, 30 Sup. Ct. 190, 54 L. Ed. 355; Ludwig v. Western Union Telegraph Co., 216 U. S. 146, 162, 30 Sup. Ct. 280, 54 L. Ed. 423; Pullman Company v. Kansas, 216 U. S. 56, 65, 30 Sup. Ct. 232, 54 L. Ed. 378; Hall v. De Cuir, 95 U. S. 485, 488-490, 497, 498-513, 24 L. Ed. 547; Bowman v. Chicago, Etc., Ry. Co., 125 U. S. 465, 8 Sup. Ct. 689, 1062, 31 L. Ed. 700; Welton v. Missouri, 91 U. S. 275, 280, 23 L. Ed. 347; Crutcher v. Kentucky, 141 U. S. 47, 57, 58, 59, 11 Sup. Ct. 851, 35 L. Ed. 649."

Special cases wherein the principle for which we con-

tend has been applied, and acts of State authorities have been held void upon this principle, are found in (again quoting Judge Sanborn) "statutes imposing burdensome conditions on the landing of passengers from vessels employed in foreign commerce (Henderson v. Mayor of New York, Etc., 92 U. S. 259, 268, 23 L. Ed. 543); requiring carriers engaged in interstate commerce to give all persons upon their public conveyances equal rights and privileges in all parts of those conveyances without discrimination or distinction on account of race or color (Hall v. De Cuir, 95 U. S. 485, 486, 488, 490, 24 L. Ed. 547); requiring telegraph companies to deliver dispatches by messenger to the persons to whom they are addressed so far as such a statute attempts to regulate the delivery of such dispatches at places in other States (Western Union Telegraph Co. v. Pendleton, 122 U. S. 347, 7 Sup. Ct. 1126, 30 L. Ed. 1187); prohibiting a higher rate for a short haul entirely within the State than that charged for a longer interstate haul (Wabash, Etc., Ry. Co. v. Illinois, 118 U. S. 557, 573, 7 Sup. Ct. 4, 30 L. Ed. 244); forbidding common carriers to bring intoxicating liquors into a State without a certificate that the consignee is authorized to sell such liquors in the county (Bowman v. Chicago, Etc., Ry. Co., 125 U. S. 465, 8 Sup. Ct. 689, 1062, 31 L. Ed. 700); prohibiting the sale in a state of fresh meats which have not been taken from animals inspected within the State within 24 hours before they are slaughtered (Minnesota v. Barber, 136 U. S. 313, 322, 329, 10 Sup. Ct. 862, 34 L. Ed. 455); prohibiting the sale of fresh meats from animals slaughtered 100 miles or more from the place at which they are offered for sale, unless they have been previously inspected by local inspectors (Brimmer v. Reb-

man, 138 U. S. 78, 81, 11 Sup. Ct. 213, 34 L. Ed. 862); prescribing tolls for the use of a bridge across a river between two States (Covington Bridge Co. v. Kentucky, 154 U. S. 204, 211, 212, 216, 217, 222, 14 Sup. Ct. 1087, 38 L. Ed. 962); requiring a railroad company engaged in interstate commerce to furnish an unreasonable number of cars to shippers in the State upon demand (Houston, Etc., Ry. Co. v. Maves, 201 U. S. 321, 327, 328, 26 Sup. Ct. 491, 50 L. Ed. 772); requiring such a company to stop all its regular trains at county seats on its line (Cleveland, Etc., Ry. Co. v. Illinois, 177 U. S. 514, 517, 519, 20 Sup. Ct. 722, 44 L. Ed. 868); requiring such a company to stop its through fast trains at a specified station in the State (Atlantic Coast Line R. R. Co. v. Wharton, 207 U. S. 328, 334, 337, 28 Sup. Ct. 121, 52 L. Ed. 230); levying a tax 'equal to 1 per cent of its gross receipts' on each railroad lying wholly within the State (Galveston, Harrisburg, Etc., Ry. Co. v. Texas, 210 U. S. 217, 227, 28 Sup. Ct. 638, 52 L. Ed. 1031); and requiring foreign corporations to pay large fees as a condition of carrying on business entirely intrastate within a State, although by the orders of the charter board expressly leaving these corporations free to carry on interstate commerce in the State without any condition or restriction (Western Union Telegraph Co. v. Kansas, 216 U. S. 1, 7, 27, 37, 30 Sup. Ct. 190, 54 L. Ed. 355; Pullman Company v. Kansas, 216 U. S. 56, 65, 30 Sup. Ct. 232, 54 L. Ed. 378; Ludwig v. Western Union Telegraph Co., 216 U. S. 146, 162, 163, 30 Sup. Ct. 280, 54 L. Ed. 423)."

And again quoting Judge Sanborn: "It is the effect and not the terms or purpose of State regulations of its local commerce that determines whether or not they

so substantially burden interstate commerce that they violate the commercial clause of the Constitution."

We respectfully submit that the Act of the Arkansas Legislature and the rules of the Arkansas Railroad Commission which are assailed in this litigation come within the class of State statutes and Commission rules that must be declared void as unduly interfering with and burdening, through their necessary effect, interstate commerce.

Respectfully submitted,

LOVICK P. MILES,

MARTIN L. CLARDY,

For Appellee.

HAMPTON *v.* ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

No. 3. Argued October 29, 30, 1912.—Decided February 24, 1913.

A provision in a state statute that interstate railroads shall furnish cars for interstate shipments which regulates the furnishing of cars is invalid by reason of the Hepburn Act; but if it only means that there shall be no discrimination against interstate shipments, it might not invalidate an act, otherwise valid, as to intrastate shipments.

The fact that an act requiring railroads to furnish cars includes no exceptions is not conclusive of its meaning and intent; and an act cannot be construed as not permitting any exceptions where, as in this case, the state court has held that the penalties are enforceable only in an action at law, and that as such a provision is declaratory of the common law, any reasonable excuse may be interposed.

This court will not entertain a case where the party setting up the unconstitutionality of a statute does not belong to the class for whose sake the constitutional protection is given or to the class primarily affected; nor will it, at the instance of a party not belonging to a class affected, go into an imaginary case on the ground that the law if unconstitutional as to one is so as to all. *Hatch* v. *Reardon*, 204 U. S. 152.

Where there was an agreement of the parties to confine the case wholly to the question of constitutionality of the statute attacked, and complainant does not show that his rights protected under the Constitution have actually been invaded, but the objections suggested are conjectural, the bill should be dismissed; and so *held* as to an action brought to test the constitutionality under the commerce clause of a statute of Arkansas requiring railroads to promptly furnish cars.

162 Fed. Rep. 693, reversed.

THIS bill was filed for the purpose of enjoining the bringing of actions in the state courts, in the name of the State, to recover penalties declared by the Railroad Com-

mission of the State for the violation of a statute requiring railroads to furnish cars upon the application of shippers, and forbidding discrimination between shippers in furnishing such cars.

The facts necessary to be stated are these:

Upon a complaint duly filed, and after a full hearing, the Railroad Commission of the State found that the railroad company had, during every day between September 20th and September 30th, 1907, inclusive, refused to furnish cars upon statutory notice and request of the operators of several coal companies operating along the line of its railroad in the State of Arkansas, and had also, during the same period discriminated in favor of a coal company which it controlled, by furnishing it with an adequate supply of cars, although part of the coal so carried was for sale upon the market. The requests for cars so refused were for shipments from the mines within the State to destinations in the same State, and were not for the purpose of interstate transportation.

The bill charged that the Railroad Commission was about to transmit a transcript of its proceedings to the several state prosecuting attorneys in counties where the railroad was situated, with an order that action should be brought in the name of the State for the enforcement of the penalties as provided by §§ 11 and 18 of an act of the Arkansas Legislature of March 11, 1899 (Act 53, Laws of 1899, pp. 82, 89, 93), being § 6804, Kirby's Digest.

The bill alleges that although engaged in operating a railroad within the State of Arkansas, the company's lines extended into adjacent States, and that it is therefore an interstate carrier subject to the act of Congress of February 4, 1887, and its amendments. It charges that by an act of the legislature of the State of Arkansas passed April 19, 1907 (Act 193, Acts of 1907, p. 453), the Railroad Commission of the State is vested with authority to regulate railroads within the State, in respect to the duty of

furnishing cars to shippers, and that it has under that authority promulgated order No. 346, which follows in phraseology the provisions of § 1 of the act referred to. It is then contended that this act of April 19, 1907, and the order of the commission in pursuance of said first section, constitute an exertion of the power of the State over interstate commerce and as such are invalid. It was averred that if the bringing of the threatened suits was not enjoined complainant would be subjected to a multitude of actions and to a liability for the excessive penalties imposed by the eighteenth section of the act of 1899, being a minimum of not less than $500 for each offense, and a maximum of as much as $3,000.

The bill denied any liability under the act, even if valid, and presented various reasons why it had not supplied the cars requested.

Answer was filed and issue taken upon every material defense set up upon the merits. The cause was heard upon bill and answer, there being no evidence upon the matters of defense touching the merits of the case.

The Circuit Court held the entire act of April 19, 1907, to be null and void as an invalid invasion of the field of interstate commerce, and accordingly enjoined its enforcement and the bringing of the actions which the commission had ordered.

Mr. Hal L. Norwood, Attorney General of Arkansas, and *Mr. Maurice M. Cohn* for appellants, submitted:

Although the transportation of cars in interstate haul constitutes a very large percentage of the railroad business of the country, the furnishing of cars, as contemplated by the act, is still within the state power, even though the matter of directing supply of cars for intrastate traffic may, directly or indirectly, affect interstate transportation.

No matter, however, how extensive interstate traffic

may be as compared with state traffic, Congress cannot legislate upon matters committed to the States, even though the law would tend to become more uniform if this were done. *Employers' Liability Cases*, 207 U. S. 463; *Adair* v. *United States*, 208 U. S. 176, 180; *Railway Company* v. *McKendree*, 203 U. S. 514.

Congress has not undertaken to cover the whole subject of supply of cars.

Appellee is entitled only to raise the question of unconstitutionality of the act of April 19, 1907, so far as that is material to its case. *Gas Illuminating Co.* v. *Lungren*, 152 U. S. 200; *Howard* v. *Stillwell*, 139 U. S. 199; *Telegraph Co.* v. *Hall*, 124 U. S. 444; *Phillips Construction Co.* v. *Seymour*, 91 U. S. 646; *Smith* v. *Cowdry*, 1 How. 28; *The Appollon*, 9 Wheat. 362.

The mere imposition of penalties by a statute does not, of itself, furnish a cause of action to every citizen or corporation which, in time to come, may be affected by it. Penalties in large sums have been upheld where they were justified by the course of conduct of the complaining party. Corporations, especially powerful ones, can only be reached by means of large penalties. *Waters-Pierce Oil Co.* v. *Texas*, 212 U. S. 86, 111; *Armour Packing Co.* v. *United States*, 208 U. S. 274; *Loewe* v. *Lawlor*, 208 U. S. 274; *Seaboard Air Line* v. *Seegers*, 207 U. S. 73; *Chattanooga F. Co.* v. *Atlanta*, 203 U. S. 390; *Marvin* v. *Trout*, 199 U. S. 22; *National Oil Co.* v. *Texas*, 197 U. S. 115; *Railway Co.* v. *May*, 194 U. S. 267; *Addyston Pipe Co.* v. *United States*, 175 U. S. 211; *N. Y. Cent. R. R.* v. *United States*, 212 U. S. 481, 495.

Ex parte Young, 209 U. S. 125, does not apply, as in that case there was an oppressive use of state power, amounting to a denial of justice.

The decree and the bills deal with imaginary evils which are made the basis of need for relief. Imaginary evils will not be considered in the determination of causes.

Commodities Clause Cases, 213 U. S. 366, 407, 408; *Employers' Liability Cases*, 207 U. S. 463; *Angle* v. *Railroad Co.*, 151 U. S. 1; *Amy* v. *Watertown*, 130 U. S. 301; *Doyle* v. *Insurance Co.*, 94 U. S. 535; *Brewer* v. *Bougher*, 14 Pet. 178; *Fletcher* v. *Peck*, 6 Cr. 87; *Calder* v. *Bull*, 3 Dall. 386.

The interpretation which will sustain an act rather than the contrary will be adopted. *Commodities Clause Cases*, 213 U. S. 366, 407, 408; *Knights Templar Co.* v. *Jarman*, 187 U. S. 197, 205.

The construction put upon the act by the state court will be followed by this court. *Hammond Packing Co.* v. *Arkansas*, 212 U. S. 322, 347; *Waters-Pierce Oil Co.* v. *Texas*, 177 U. S. 28; *Henry* v. *Nicholay*, 95 U. S. 619; *Railroad Co.* v. *Adams*, 181 U. S. 580.

The States and their Railroad Commissions may deal with the subject of furnishing cars, even though some or all of the cars to be furnished are destined for interstate transportation. *Houston & Texas Cent. R. R.* v. *Mayes*, 201 U. S. 321; *Mo. Pac. Ry.* v. *Larabee Milling Co.*, 211 U. S. 612.

Even though Congress has the power to deal with the whole subject of interstate commerce, in all of its phases, down to the local supply of cars in all parts of the country, yet there may be state police direction in reference to matters which may eventually be covered by congressional legislation, so long as Congress has not dealt with the matter and the state action may not amount to an undue burden upon interstate commerce. *Brig James Gray* v. *Ship John Fraser*, 21 How. 184; *Railroad Co.* v. *Fuller*, 17 Wall. 560; *Smith* v. *Alabama*, 124 U. S. 465; *Railway Co.* v. *Alabama*, 128 U. S. 96; *Railway Co.* v. *Ohio*, 173 U. S. 285; *Railway Co.* v. *Illinois*, 163 U. S. 142; *Railway Co.* v. *Illinois*, 177 U. S. 514; *Gladson* v. *Minnesota*, 193 U. S. 53; *Atlantic Coast Line* v. *Wharton*, 207 U. S. 335. See Amer. Law Rev., Sept.–Oct., 1908, 666.

In no point of view was the Circuit Court justified in holding that the act was unconstitutional.

So long as the cars are not loaded they are not so committed to interstate or intrastate commerce that their destination may not be changed; and therefore the States ought to properly deal therewith. *Coe* v. *Errol*, 116 U. S. 517; *American &c. Co.* v. *Speed*, 192 U. S. 500; *Railroad Co.* v. *Mayes*, 201 U. S. 321; *Missouri Pac. Ry. Co.* v. *Larabee Milling Co.*, 211 U. S. 612.

Mr. Lovick P. Miles, with whom *Mr. Martin L. Clardy* was on the brief, for appellee:

If the power be conceded to a State to require, under heavy penalties, the furnishing of cars by an interstate carrier for intrastate shipments, then, as between the States served by such common carrier, the State exacting the heaviest penalties will bring to its intrastate shippers an undue proportion of the cars available to such carrier; and likewise, if States are conceded the power to require the furnishing of cars by interstate carriers, under heavy penalties, to intrastate shippers, then, if the penalties imposed by Federal authority for failure to furnish cars for interstate traffic are less than those imposed by the States, the carriers will devote to intrastate traffic an undue proportion of their available cars. Section 3 of Int. Comm. Act. See *Southern Railway Co.* v. *United States*, 222 U. S. 20, holding that all cars of any railroad engaged in interstate commerce were subject to the provisions of the Safety Appliance Act.

The Hepburn Act defines transportation as including cars and other vehicles and all instrumentalities and facilities of shipment or carriage. *Shepard* v. *Nor. Pac. Ry. Co.*, 184 Fed. Rep. 770.

See also *Henderson* v. *New York*, 92 U. S. 259, 268; *Hall* v. *De Cuir*, 95 U. S. 485; *West. Un. Tel. Co.* v. *Pendleton*, 122 U. S. 347; *Wabash &c. Ry. Co.* v. *Illinois*, 118 U. S.

557, 573; *Bowman* v. *Chicago &c. Ry. Co.*, 125 U. S. 465; *Minnesota* v. *Barber*, 136 U. S. 313, 322; *Brimmer* v. *Rebman*, 138 U. S. 78, 81; *Covington Bridge Co.* v. *Kentucky*, 154 U. S. 204; *Houston &c. Ry. Co.* v. *Mayes*, 201 U. S. 321, 327; *Cleveland &c. Ry. Co.* v. *Illinois*, 177 U. S. 514; *Atlantic Coast Line R. R. Co.* v. *Wharton*, 207 U. S. 328, 334; *Galv., Har. &c. Ry. Co.* v. *Texas*, 210 U. S. 217, 227; *West. Un. Tel. Co.* v. *Kansas*, 216 U. S. 1; *Pullman Co.* v. *Kansas*, 216 U. S. 56; *Ludwig* v. *West. Un. Tel. Co.*, 216 U. S. 146, 162.

It is the effect and not the terms or purpose of state regulations of its local commerce that determines whether or not they so substantially burden interstate commerce that they violate the commercial clause of the Constitution. *Shepard* v. *Nor. Pac. Ry. Co.*, *supra*.

MR. JUSTICE LURTON, after making the above statement, delivered the opinion of the court.

The single purpose of this case is to prevent the bringing of actions at law in the name of the State and by order of the State Railroad Commission to recover penalties prescribed by the Arkansas act of March 11, 1899, §§ 11 and 18, for the violation of the provisions of § 11 of the act referred to, and of § 1 of the act of April 19, 1907. The case turned below upon the single question of the constitutionality of the act of April 19, 1907, being an act entitled, "An Act to regulate freight transportation by railroad companies doing business in the State of Arkansas." The only parts of that act here in any way involved are the first paragraph of the first section, and the last clause in the seventeenth section. The paragraph of the first section is the legislative authority under which the Commission finds power to make its order No. 346, concerning the duty of carriers to furnish cars upon the demand of shippers, its said order being in the very words of that paragraph, as follows:

"That when a shipper makes a written application to the station agent of a railroad company for a car or cars, to be loaded with any kind of freight embraced in the tariff of said company, stating in said application the character of freight, and its final destination, the railroad company shall furnish same at the place of shipment within six days from 7 o'clock A. M. the day following such application."

The clause concluding the seventeenth section of the act is in these words:

"Interstate railroads shall furnish cars on application for interstate shipments the same in all respects as other cars to be furnished by intrastate railroads under the provisions of this Act."

The order of the Commission directed the bringing of actions against the defendant in error for the wilful violation of the provisions of § 1, set out above, and also for an illegal discrimination under § 11 of the act of March 11, 1899, referred to above. That section forbids any discrimination or preference in furnishing cars and requires equal facilities to all under like circumstances and conditions.

By agreement of the parties, recited in the decree below, and repeated in the memorandum opinion filed by the Circuit Judge, every question was eliminated from the case except the constitutionality of the act of 1907. The issue for our consideration by this action of the parties is very succinctly stated by Judge Treiber, who presided in the Circuit Court, in these words (p. 694):

"In the argument counsel agreed that the only question necessary for a final determination of this cause is the constitutionality of the act of the General Assembly of the State of Arkansas, No. 193, approved April 19, 1907, entitled, 'An Act to regulate freight transportation by railroad companies doing business in the state of Arkansas,' and, if unconstitutional, that the injunction may be made perpetual."

The court then adds:

"The court holds the act is unconstitutional upon two grounds: 1. By the last sentence of section 17 it is clearly shown that the intention of the Legislature was to apply its provisions to interstate shipments as fully as to intrastate shipments, and there is nothing in the act to indicate that the act would have been passed unless it could thus be made applicable. This is clearly an interference with interstate commerce, and, as this provision cannot be disregarded without defeating one of the main objects of the act, it is unconstitutional. 2. The requirement to furnish the cars is absolute and makes no exceptions for cases of a sudden congestion of traffic, actual inability to furnish cars by reason of their temporary detention in other states or in other places within the same state, none for interference of traffic occasioned by wrecks, accidents, or strikes. *Houston &c. R. R.* v. *Mayes*, 201 U. S. 321 is conclusive.

"For these reasons the temporary injunction heretofore granted will be made perpetual as to proceedings by defendants under the act of April 19, 1907, but the injunction is not to apply to any acts by defendants under any other statutes of the State. Let there be a decree accordingly."

Neither have counsel for appellees in this court presented any question other than that of the unconstitutionality of the act of 1907. We shall, therefore, for the purposes of this case assume that the railroad company did fail and refuse to furnish cars as requested and that it also favored a coal company in which it was interested, and that it rests its defense upon the invalidity of the act of 1907.

The attack upon that act turned upon two propositions.

a. That the clause of the seventeenth section, set out above, manifests an intention that the act shall apply as well to interstate shipments as to intrastate shipments, and that this purpose invalidates the whole act, as there

is nothing to justify the court in saying that the valid parts of the act would have been passed without the invalid parts.

b. That the requirement to furnish cars found in the first section is absolute and that no excuse arising from the detention of the company's cars upon other and connecting lines of railroad in and out of the State, nor for delays due to sudden emergencies, unusual congestion of traffic, catastrophes or other unavoidable and unusual conditions without fault, is a defense against the penalty imposed for failure to supply cars as required.

Coming first to the clause in the seventeenth section which the court below held invalidated the whole act:

That clause probably means no more than that there shall be no discrimination against demands for cars for interstate shipments. If, however, it be construed as extending the act so as to regulate the furnishing of cars for interstate shipments, it would be invalid by reason of the provisions of the Hepburn Amendment to the act to regulate commerce of June 29, 1906: *Chicago, R. I. & P. R. Co.* v. *Hardwick Elevator Co.*, 226 U. S. 426.

The effect of this upon the remainder of the act has not been considered in the briefs of appellee, further than to say that in *Oliver* v. *Chicago, R. I. & P. R. Co.*, 89 Arkansas, 466, decided pending this appeal, the Supreme Court of the State has held the act valid as including an elaborate and workable scheme for the regulation of intrastate railroad traffic, irrespective of the invalidity of the clause referred to. We shall therefore assume the remainder of the act to be valid, although the clause in question be regarded as invalid.

Neither is the requirement of the act as to the duty of furnishing cars absolute, as held by the court below. That the act upon its face includes no exceptions or excuses is not conclusive of its meaning and intent. The case of *Houston & T. C. R. Co.* v. *Mayes*, 201 U. S. 321, is not

controlling. The dereliction there involved was in the failure to furnish cars for an interstate shipment, under a Texas statute which required the carrier to furnish cars upon six days' notice, with a provision that the law should not "apply in cases of strikes or other calamity." This court concluded that the inclusion of a particular exception, excluded all others, and that an absolute requirement that a railroad shall furnish a certain number of cars at a specific day, regardless of every other consideration "except strikes and other public calamities" amounted to a burden upon interstate commerce. The court added (p. 329), "It makes no exception in cases of a sudden congestion of traffic, an actual inability to furnish cars by reason of their temporary and unavoidable detention in other States, or in other places within the same State," etc.

But the penalties imposed by the act here involved are enforceable only in an action at law, and in such an action the Supreme Court of the State has held that such a statutory provision is but declarative of the common law, and that any reasonable excuse for a failure to furnish cars upon the requirement of a shipper, may be interposed. *St. Louis S. W. Railway* v. *Clay County Gin Co.*, 77 Arkansas, 357; *St. Louis S. W. R. Co.* v. *State*, 85 Arkansas, 311; *Oliver* v. *Railroad*, 89 Arkansas, 466, 470. In the case last cited the Arkansas court said of this provision of the act of 1907, that,

"The failure to furnish cars under the terms of the act under investigation will establish *prima facie* a breach of duty on the part of the railroad companies. This will not preclude their right to set up such defense as will excuse or justify the failure. That a fair division of cars with interstate business made it impossible to answer all demands made for cars for intrastate business would apparently be within the limit of proper defenses in cases of demands too unusual to be foreseen; and, viewed in this

way, the act is relieved of the imputation of burdening interstate commerce."

In the case of *Railroad* v. *State*, cited above, the excuse for failure to furnish cars upon the requirement of a shipper was that it was unable to do so because, while its car equipment was ample for all the demands of its traffic, it had, at the time when it made default, lost control of a majority of its cars through the fact that they had been sent beyond its own line in interstate commerce, and it had been unable to secure their prompt return through the inefficiency of the rules and regulations of the American Railway Association, of which it was a member. Although it appeared that ninety per cent. of all the railroad companies in the United States were members of that association and permitted interchange of cars with connecting railroads, and the company was powerless to correct the rules and regulations of that association or supervise their enforcement, the Arkansas court held that the detention of its cars upon other lines of railroad in the course of its interstate business afforded no reason for its failure to supply cars in the particular case under consideration. The case was reversed by this court, 217 U. S. 136, 147; when the court, among other things, said:

"As the penalty, which the court sustained, was enforced solely because of its conclusion as to the inefficiency of the rules and regulations of the American Railway Association, which governed ninety per cent. of the railroads in the United States, the court was evidently not unmindful that the carrier before it was powerless of its own motion to change the rules thus generally prevailing, and therefore was necessarily either compelled to desist from the interchange of cars with connecting carriers for the purpose of the movement of interstate commerce, or to conduct such business with the certainty of being subjected to the penalties which the state statute provided for."

And the court further said (p. 149):

"The ruling of the court below involved necessarily the assertion of power in the State to absolutely forbid the efficacious carrying on of interstate commerce, or, what is equivalent thereto, to cause the right to efficiently conduct such commerce to depend upon the willingness of the company to be subjected to enormous pecuniary penalties as a condition of the exercise of the right."

The cases referred to make it clear that the statutory duty of furnishing cars upon the reasonable notice of a shipper is not absolute, and that the legislature did not intend to impose upon railroad companies the duty of furnishing cars to a particular shipper regardless of its equal duty to other shippers, state and interstate, or to a situation due to some unusual and unavoidable condition which made it unreasonable that it should be penalized for non-compliance; and also that if in the administration of the statute a ruling is made by the state court in respect to an excuse for non-compliance which operates as a restraint upon interstate commerce, a Federal question arises which may be reviewed by this court.

The conclusion we reach is that the railroad company, as the case is presented by the pleadings, the agreement of the parties and the ruling of the court below, is making an effort to test the constitutionality of the act of 1907, without showing that in the operation of the act interstate commerce has been illegally restrained or burdened, or that any defense which it may have for the neglect to comply with the provisions of the act as to furnishing cars has been or will be denied by virtue of its obligation as an interstate railroad. The objections which are suggested in the bill are conjectural and academic. The excuse made by the bill for its refusal to furnish the cars requested and for its illegal discrimination were put in issue by the answer and not proved. In *Hatch* v. *Reardon*, 204 U. S. 152, 160, it is said:

"That unless the party setting up the unconstitutionality of the state law belongs to the class for whose sake the constitutional protection is given, or the class primarily protected, this court does not listen to his objections, and will not go into imaginary cases, notwithstanding the seeming logic of the position that it must do so, because if for any reason, or as against any class embraced, the law is unconstitutional, it is void as to all. *Supervisors* v. *Stanley*, 105 U. S. 305, 311; *Clark* v. *Kansas City*, 176 U. S. 114, 118; *Lampasas* v. *Bell*, 180 U. S. 276, 283, 284; *Cronin* v. *Adams*, 192 U. S. 108, 114. If the law is valid when confined to the class of the party before the court, it may be more or less of a speculation to inquire what exceptions the state court may read into general words, or how far it may sustain an act that partially fails."

This principle has been applied in many cases, among them: *Turpin* v. *Lemon*, 187 U. S. 51, 60; *The Winnebago*, 205 U. S. 354, 360; *Citizens Bank* v. *Kentucky*, 217 U. S. 443; *Southern Railway* v. *King*, 217 U. S. 524, 534; *Rosenthal* v. *New York*, 226 U. S. 260, 271.

The result is that the decree must be reversed and the case remanded with direction to dismiss the bill.